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IN THE

Supreme Court of the United States

OCEANIC EXPLORATION COMPANY,
A DELAWARE CORPORATION; ET AL., PETITIONERS

v.

PHILLIPS PETROLEUM COMPANY ZOC,
A DELAWARE CORPORATION ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do this Court's decisions in *Twombly and Iqbal* permit a federal district court to enter a Rule 12(c) judgment on the pleadings, finding the pleading to be fatally "implausible:"

- When another federal district judge has twice sustained the very same complaint, required the defense to answer it, and authorized discovery on that complaint?

- When the subject matter of the implausibility holding is clearly contested in the pleadings?

- When the implausibility determination was made on the basis of "facts" arising from sources outside the pleadings, and outside the court record?

- When the implausibility determination was made on the basis of fact findings that are not only false, but verifiably false?

- When the implausibility determination undermines the authority of the Federal Rules of Civil Procedure and/or the Federal Rules of Evidence?

- When the pleading of state law claims is wholly consistent with the Official Forms, and so sufficient under the Federal Rules?

stock.

Unless context indicates otherwise, "Oceanic" as used herein refers both to Oceanic Exploration Company and Petrotimor.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS iii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

RELEVANT PROVISIONS INVOLVED 2

STATEMENT 2

REASONS FOR GRANTING THE PETITION 13

CONCLUSION 39

APPENDIX

Opinion (Fifth Circuit), November 6, 2009 ..... 1a
District Court Memorandum (Southern District of Texas), April 16, 2008 ..... 17a
Order Denying Panel Rehearing and Rehearing En Banc, (Fifth Circuit), December 3, 2009 ..... 33a
District Court Memorandum (District of Columbia), September 21, 2006 ..... 36a
District Court Memorandum (District of Columbia), November 17, 2006 ..... 89a
District Court Final Judgment (Southern District of Texas), April 22, 2008 ..... 91a
Plaintiff's Second Amended Complaint 93a
ConocoPhillips' Defendants' Answer 165a
Relevant Provisions Involved 216a

TABLE OF AUTHORITIES

Page

CASES

ASHCROFT V. IQBAL, 129 S. CT. 1937 (2009) 2, 15, 17
ASHE V. CORLEY, 992 F.2D 540, 545 (5TH CIR. 1993) 28
ASTECH-MARMON, INC. V. LENOCI, 349 F. SUPP. 2D 265 (D. CONN. 2004) 11
BELL ATLANTIC CORP. V. TWOMBLY, 550 U.S. 544 (2007) 2, 10, 17
BIETER CO. V. BLOOMQUIST, 987 F.2D 1319 (8TH CIR. 1993) 11
BJC HEALTH SYS. V. COLUMBIA CAS. CO., 478 F.3D 908, 914 (8TH CIR. 2007) 36
BRIDGE V. PHOENIX BOND & INDEM. CO., 128 S. CT. 2131 (2008) 11
CELOTEX CORP. V. CATRETT, 477 US. 317, 327 (1986) 27
DURA PHARMACEUTICALS, INC. V. BROUDO, 544 U.S. 336, 346 (2005) 28
ENVIRONMENTAL TECTONICS CORP. INT'L V. W.S. KIRKPATRICK & CO., INC., 847 F.2D 1052 (3D CIR. 1987) 11
ERICKSON V. PARDUS, 551 U.S. 89, 93 (2007) 10, 28
GUIDRY V. U.S. TOBACCO CO., INC., 188 F.3D 619, 632 (5TH CIR. 1999) 29
HERBERT ABSTRACT CO., INC. V. TOUCHSTONE PROPERTIES, LTD., 914 F.2D 74, 76 (5TH CIR. 1990) 18
IN RE BURZYNSKI, 989 F.2D 733, 739 (5TH CIR. 1993) 29
J.M. BLYTHE MOTOR LINES CORP. V. BLALOCK, 310 F.2D 77, 78-79 (5TH CIR. 1962) 18
LOPEZ V. RICA FOODS, 277 FED. APPX. 931, 2008 WL 2043510 AT *2 (11TH CIR. 2008) 29
MCZEAL V. SPRINT NEXTEL CORP., 501 F.3D 1354, 1360 (FED. CIR. 2007) 29
MEMPHIS TENNESSEE AREA LOCAL POSTAL WORKERS UNION V. MEMPHIS, 361 F.3D 898, 902 (6TH CIR. 2004) 32
MYLAN LABS, INC. V. AZKO, N.V., 770 F. SUPP. 1053

(D. MD. 1991) 11
PEARSON V. CALLAHAN, 129 S. CT 808 (2009) 38
PRUITT V. HARDWARE DEALERS MUT. FIRE INS. CO., 112 F.2D 140, 142 (5TH CIR. 1940) 36
SAUCIER V. KATZ, 533 U.S. 194 (2001) 38
U.S. V. NORTHERN TRUST CO., 372 F.3D 886, 888 (7TH CIR. 2004) 32
UNITED STATES V. STANDIFORD, 148 F.3D 864, 868 (7TH CIR. 1998) 35
VOEST-ALPINE TRADING USA CORP. V. BANK OF CHINA, 142 F.3D 887, 891 (5TH CIR. 1998) 19
W.S. KIRKPATRICK & CO., INC. V. ENVIRONMENTAL TECTONICS CORP., INTERNATIONAL, 493 U.S. 400 (1990) 11

STATUTES

15 U.S.C. § 15 2
18 U.S.C. § 1964 2
18 U.S.C. §§ 1964(C) 1
28 U.S.C. § 1254(1) 1
28 U.S.C. §§ 1330 1
28 U.S.C. § 1367 2

RULES

FED R. CIV. P. 8 ..... 3, 26
FED. R. CIV. P. 8(A)(2) 10, 28
FED R. CIV. P. 12(C) 2
FED R. CIV. P. 56(F) 27
FED. R. CIV. P. 84 29
FED. R. EVID. 102 27
FED. R. EVID. 201(B) 26
FED. R. EVID. 201(E) 26
FEDERAL PRACTICE & PROCEDURE § 1367 (2008 WESTLAW EDITION) 19
FEDERAL PRACTICE & PROCEDURE § 1371 20
FEDERAL PRACTICE & PROCEDURE § 5102 25

OTHER AUTHORITIES

Access to Justice Denied: Ashcroft v. Iqbal, Hearing before the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties, of the Committee on the Judiciary, Oct. 27, 2009, available at http://judiciary.house.gov/hearings/hear_091027_1.html 14

Evaluating the Supreme Court's Decision in Twombly and Iqbal, Hearing before the Senate Judiciary Committee, Dec. 2, 2009, available at http://judiciary.senate.gov/hearings/hearing.cfm?id=4189 14

OPINIONS BELOW

The Fifth Circuit's November 6, 2009 opinion (Pet. App. 1a-16a) was not selected for publication in the *Federal Reporter*, but is available at 2009 WL 3698085. The Fifth Circuit's December 3, 2009 order denying panel rehearing and rehearing *en banc* (Pet. App. 33a-35a) has not been reported.

The opinion of the U.S. District Court for the Southern District of Texas, dated April 16, 2008 (Pet. App. 17a-32a), is unofficially reported at 2008 WL 177003. Its final judgment dated April 22, 2008, is included in the Appendix (Pet. App. 91a-92a)

The September 21, 2006 opinion (Pet. App. 36a-88a) and the November 17, 2006 opinion (Pet. App. 89a-90a) of the U.S. District Court for the District of Columbia are not officially reported. The September 21, 2006 opinion is unofficially reported at 2006 WL 2711527.

JURISDICTION

The Fifth Circuit's judgment was entered on November 6, 2009. Pet. App. at 1a-16a. The Fifth Circuit denied Oceanic's timely petition for rehearing and rehearing *en banc* on December 3, 2009. Pet. App. at 33a-35a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The District Court had subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1330, 1331, 1337, 1338; 18 U.S.C. §§ 1964(c),

1965; and 15 U.S.C. §§ 15, 1121, and over the state law claims pursuant to 28 U.S.C. § 1367.

RELEVANT PROVISIONS INVOLVED

This case involves the dismissal, at the pleading stage, of civil claims for damages asserted under 18 U.S.C. § 1964 and 15 U.S.C. § 15, and under state law. The dismissal was pursuant to Federal Rule of Civil Procedure 12(c) for an alleged failure to comply with Federal Rule of Civil Procedure 8(a). The texts of these and related provisions are included in the Appendix.

STATEMENT

This case raises important questions regarding the power of the federal courts to dismiss a lawsuit under the "plausibility" pleading standards this Court announced in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). The problems with that power, and its potential for misuse and abuse – on a systemic and/or an idiosyncratic basis – are evident in all aspects of this case. As a result, this case reflects, as few others can, the need for well-defined limits on the scope of that power.

Petitioners therefore ask this Court to define the substantive and procedural limits on the *Twombly/Iqbal* analysis, and do so in the interest of making that analysis as fair and just as possible. If such limits cannot be imposed, and such fairness attained, petitioners ask that the plausibility analysis be abandoned.

A. FACTUAL BACKGROUND

In August of 1999, after nearly twenty-five years of a brutal Indonesian occupation, the people of East Timor voted for independence in a United Nations-sponsored election. That independence would become a reality by May of 2002. In the interim, it was absolutely clear that the change of sovereigns would bring a change in control over East Timor's largely untapped oil and gas deposits in the adjacent Timor Sea.[1]

Oceanic held an oil and gas exploration and production concession for much of that area prior to the 1975 Indonesian invasion. To Oceanic then, the impending change in sovereigns, together with the new sovereign's necessary nullification of occupation-era grants of oil and gas concessions in East Timor's waters, held out the prospect of Oceanic's resuming the exploration and production program in East Timorese waters that it had begun in the late 1960s.

The same changes portended nothing but trouble to Phillips Petroleum Company ("Phillips"). Phillips' still-undeveloped interests in those waters had been granted, directly and indirectly, by its long-time Indonesian friends – while they were occupying East Timor. From even before the East Timor vote for independence until mid-2003, Phillips (subsequently ConocoPhillips)[2] was acutely aware that its post-

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[1] For maps of the relevant areas, *see* Docket Entry ("DE") 81, Exhibits "A," "B-1," and "B-2."

[2] The merger between Conoco, Inc., of Houston, Texas, and Phillips, of Bartlesville, Oklahoma, was not effective until August 30, 2002. *See* Pet. App. at 100, ¶ 12; DE 158 at

independence position in East Timor was very much in jeopardy.

In this case, Oceanic alleges that ConocoPhillips responded to the situation by bribing East Timorese government officials (particularly Mari Alkatiri, East Timor's first Prime Minister and the central governmental actor in East Timorese national resource matters in the pre-independence period) to insure that the new nation would award its potentially lucrative oil and gas production sharing contracts to ConocoPhillips, and exclude Oceanic and Petrotimor from any opportunity to obtain such awards. Both outcomes were the natural, foreseeable and intended consequences of ConocoPhillips' successful bribery of Alkatiri, *et al.*

Accordingly, Oceanic and Petrotimor – the only parties other than ConocoPhillips seeking the production sharing contracts– further claim; (1) that they would have prevailed in any contract award process that was open to them, because their proposals were far more beneficial to East Timor; (2) that ConocoPhillips' all too effective bribery of Alkatiri, *et al.* directly resulted in Oceanic's loss of a very real and valuable economic opportunity; and (3) that Oceanic and Petrotimor are entitled to substantial actual, statutory and punitive damages as a result of this misconduct.

Attachment 3. While both (collectively "ConocoPhillips") had long experience in Indonesia, only Phillips was involved in the Timor Sea prior to the merger.

B. THE PROCEEDINGS BELOW.

1. Proceedings In The District Courts.

a. The District Of Columbia Proceedings.

From the lawsuit's inception, Oceanic has asserted both federal and state law claims for relief. After three years of motion practice in the United States District Court for the District of Columbia, and serial defense efforts to dismiss those claims,[3] Judge Emmet Sullivan twice sustained Oceanic's RICO, Robinson-Patman, unfair competition and interference claims. Each time, he carefully evaluated all of the plaintiffs' claims,[4] including the RICO standing/proximate cause issues now before this Court.

In his first, very lengthy opinion, Judge Sullivan concluded that:

> ... the plaintiffs have sufficiently alleged a legally cognizable injury at this juncture. Namely, they were harmed when they were deprived of a valuable business opportunity to develop oil and natural gas from the Timor Sea, and of a fair opportunity to secure that business

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[3] *See* Pet. App. 36a-88a (September 21, 2006 opinion on motions to dismiss); *id.* at 89a-90a (November 17, 2006 opinion denying reconsideration and interlocutory appeal).

[4] In the first opinion, Judge Sullivan also dismissed several of Oceanic's claims and a substantial number of defendants, primarily on personal jurisdiction grounds.

> opportunity due to the unlawful activities of ConocoPhillips.[5]

In the second instance, denying ConocoPhillips' efforts to obtain the reconsideration and reversal of his standing rulings, Judge Sullivan stated:

> As explained in the court's September 21, 2006 Memorandum Opinion and Order, *Plaintiffs have standing to bring the case because they have a legally cognizable injury.*[6]

Judge Sullivan also denied ConocoPhillips' requests for an "expedited" stay of their obligations to answer and to hold the scheduling and discovery planning conference mandated by the Federal Rules.[7] As a result, the ConocoPhillips answer was filed on October 10, 2006.[8] The parties actually met and conferred, and, as required, filed a joint conference report and discovery plan on October 25, 2006.[9]

The answer and discovery plan were instructive. The answer, when compared with the Oceanic

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[5] Pet. App. at 57a. Judge Sullivan also clearly stated that his finding regarding Oceanic's standing allegations (as to all counts) also satisfied the injury/standing requirements of RICO. *Id.* at 84a n. 29.

[6] Pet. App. at 89a (emphasis added).

[7] DE 94.

[8] *See* Pet. App. at 165.

[9] DE 103.

complaint, showed that virtually nothing in the case was admitted. Thus, there were hundreds of material fact issues in dispute. Not only did the answer dispute Oceanic's allegations regarding causation, injury and damages (thereby creating fact issues), it also urged numerous "affirmative defenses" giving rise to additional fact issues on those subjects. Many of those affirmative defenses were lack-of-causation defenses.[10]

The breadth of the fact issues in this case was also evident in the joint "Conference Report and Discovery Plan" that the parties submitted to the Court.[11] In that document, the parties anticipated that fact and expert discovery would open up and that it would take up to two years to complete.[12] However, the key fact was that, after four years, discovery was open at last.

But then the case was transferred to Houston.

b. The Houston Proceeding.

Neither of Judge Sullivan's orders, nor the law of the case doctrine, nor Rule 12(g)(2), nor the doctrine of

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[10] *E.g*, ConocoPhillips raised defenses claiming the lack of standing (No. 1), lack of antitrust injury (No. 29), lack of proximate causation as to the RICO claims (No. 31), lack of a cognizable RICO injury (Nos. 32, 36, 37), the alleged lack of any injury altogether (No. 40), and the alleged presence of independent, superseding and/or intervening causes (No. 42). *See* Pet. App. at 208a-214a.

[11] DE 103.

[12] *Id.* at 9-10 (¶¶ 8-9).

judicial estoppel[13] stopped ConocoPhillips from relitigating the proximate cause issue once the case was transferred to the Southern District of Texas. ConocoPhillips was successful in its efforts to relitigate the proximate cause issue. Following a "status conference" before Judge Lynn Hughes, a one year halt to the proceedings ensued. Judge Hughes then entered the caustic judgment on the pleadings that gave rise to Oceanic's Fifth Circuit appeal.

c. The Judgment On The Pleadings.

On April 16, 2008, more than a year after the initial and only in-court proceeding in Houston, and over four years after this case was filed, Judge Hughes issued (1) an order denying Oceanic's motion to strike the Rule 12(c) motion; (2) an "interlocutory order" that Oceanic take nothing from the Defendants; and (3) a memorandum opinion that granted ConocoPhillips' motion for judgment on the pleadings.[14] On April 22, 2008, Judge Hughes signed a final judgment that differed from the interlocutory order only in its title.[15] That judgment was issued, in Judge Hughes' words, because Oceanic's Complaint did not "plead facts that, if

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[13] ConocoPhillips had promised Judge Sullivan that, if they obtained the latter day transfer order to the Southern District of Texas they sought, they would not then re-litigate his rulings in the transferee court. DE 106 at 14; DE 111 at 15.

[14] *See* DE 170, Pet. App. at 17a-32a, and 91a-92a, respectively.

[15] DE 173.

true, would show that its loss was proximately caused by the bribery [of the relevant government officials]."[16]

d. The District Court Opinion.

The opinion supporting the court's "judgment on the pleadings" was remarkable in at least three respects. *First* and foremost, its conclusions regarding the pleading of proximate cause were based on a combination of *sua sponte* factual findings and judicial assumptions and hypotheses contradicted by both: (1) the express allegations contained in the complaint at issue and the plausible inferences arising therefrom; and (2) the actual facts and realities of this case.[17]

Second, and just as remarkable, was the fact that the opinion supporting the judgment made no reference to:

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[16] Pet. App. at 18a.

[17] For example, the opinion sharply questioned whether East Timor would abrogate exploration and production rights granted (by Indonesia and Australia) prior to its independence, *see* Pet. App. at 27a,, although Oceanic had clearly pleaded that East Timor had already done that as a matter of fact and law, *see* Pet. App. at 121a, ¶ 88, and ConocoPhillips admitted that "East Timor vitiated under East Timorese law all prior interest in the Timor Sea other than those confirmed by action of the new East Timorese government." Pet. App. at 184a (¶ 82a-83a). The opinion also concluded that Oceanic did not make unsolicited offers to the East Timorese leadership, *see* Pet. App. at 29a, when Oceanic's complaint identified no less than eight separate instances of its efforts to do so. Pet. App. at 134a-139a, ¶¶ 114-123.

- any procedural defects in the pleadings;[18]
- any rules or statutes, *e.g.*, Fed. R. Civ. P. 8(a)(2), 12(b)(6), 12(c), 12(d), 56;
- the legal standards and presumptions to be observed in applying such rules;
- any page numbers, paragraph numbers or portions of the Oceanic complaint under review;
- the law governing the Oceanic causes of action, or the elements of those causes of action, or the differences between them (as to proximate cause or any other issue);
- any pages, paragraphs, statements or legal conclusions made by Oceanic in any of the motion papers it had filed in either district court;
- any of the many cases offered by Oceanic in support of its positions;
- any pages, paragraphs, statements or arguments made by Judge Sullivan in the opinions that Judge Hughes was overruling;
- any errors that Judge Sullivan had allegedly made in those opinions; or
- any reasons why the very same complaint twice sustained by Judge Sullivan was now implausible.

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[18] *E.g.*, there was no statement that the Oceanic complaint had not offered a "short and plain statement of the claim stating that the pleader is entitled to relief"; *see* FED. R. CIV. P. 8(a)(2), and no complaint that the defendants did not have "fair notice" of the Oceanic claims and "the grounds upon which [they rest]." *See, e.g.*, *Erickson v. Pardus*, 551 U.S. 89, 93 (2007); *Twombly*, 550 U.S. at 555.

The *third* remarkable aspect of the opinion was its pervasive sarcasm. As but a few examples, the Court referred to the Oceanic complaint as "50 pages of trivia" and a "list of gossip and debris."[19]

2. Proceedings In The Fifth Circuit.

a. The Panel Opinion.

Though it simply cannot be the case that one American oil company's actions against another – for the purpose of foreclosing international exploration and production opportunities through the bribery of government officials – is either "implausible" or non-actionable by the injured competitor,[20] the Fifth Circuit

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[19] Pet. App. at 26a-27a. *See, also, id.* at 23a (describing the plaintiff's desire for discovery (after four years) as a request "to rummage through defendants' files and memories"); *id.* at 26a (describing detailed allegations as listing of "abstract operational facts – bribery, hostility, causation and damages"); *id.* at 27a (describing as "fanciful" allegations that the recipient of a bribe could rig the awarding of a concession).

[20] There is very good authority to the contrary. *Cf. W.S. Kirkpatrick & Co., Inc. v. Environmental Tectonics Corp., International*, 493 U.S. 400 (1990), *aff'g Environmental Tectonics Corp. Int'l v. W.S. Kirkpatrick & Co., Inc.*, 847 F.2d 1052 (3d Cir. 1987) (sustaining one American company's RICO, antitrust, and state law claims against another for using bribes to Nigerian officials to foreclose competition for Nigerian construction contracts); *Bieter Co. v. Bloomquist*, 987 F.2d 1319 (8th Cir. 1993); *Astech-Marmon, Inc. v Lenoci*, 349 F. Supp. 2d 265 (D. Conn. 2004); *Mylan Labs, Inc. v. Azko, N.V.*, 770 F. Supp. 1053 (D. Md. 1991). *See also Bridge v. Phoenix Bond & Indem. Co.*, 128 S. Ct. 2131 (2008) (fraudulent misrepresentations made to the government to permit the fraudsters to acquire government-owed liens – and to foreclose such awards to their competitors – are actionable by the foreclosed competitors). There is also no

Court of Appeals sustained the District Court's judgment on the pleadings. It did so in a *per curiam* opinion by finding implausable Oceanic's assertions that absent the bribery, it would have secured the East Timorese contracts it sought were not plausible.[21]

The Court of Appeals so held because it had factually determined from sources outside the pleadings that, however beneficial Oceanic's development proposals were to the East Timorese, the only factual proposition that was "plausible" to the Court of Appeals was that Australia would have prohibited East Timor from awarding contracts to anyone other than ConocoPhillips, the party paying bribes for those contracts.[22]

There is no basis for that proposition in the operative Second Amended Complaint, and none in the facts or law relevant to this action. The panel reached its decision only by misapplying the law to misapprehended facts,[23] and by asserting that

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shortage of instances in which multinational oil companies have bribed national government officials to secure or maintain oil and gas rights.

[21] Pet. App. at 4a ("We agree with the district court that Oceanic failed to set forth a plausible theory of proximate causation, and accordingly affirm.").

[22] Pet. App. at 13a ("Assuming, absent bribery, that East Timor was willing to consider replacing ConocoPhillips with Oceanic, the Complaint presents no reason to believe Australia would have allowed this to happen.").

[23] The three individual facts found by the Court of Appeals that are most in need of correction are the ones on which the Court

Twombly-Iqbal somehow authorized the Court of Appeals – *at the pleadings stage* – to make such factually complex findings regarding: (1) Australia's foreign policy vis-à-vis East Timor in 1999-2003; (2) Australia's policies toward the development of oil and gas resources in the Timor Sea; and (3) Australia's allegedly close and lucrative relationship with ConocoPhillips.

b. The Motions For Rehearing.

Oceanic timely filed a motion for rehearing and a petition for rehearing *en banc*. The Fifth Circuit denied both on December 3, 2009.

REASONS FOR GRANTING THE PETITION

In this petition, Oceanic respectfully asks this Court to grant *certiorari* concerning three issues. The first concerns the limits of the *Twombly/Iqbal* plausibility analysis. As applied by the Fifth Circuit in this case, there are virtually no limits on a reviewing judge's ability to roam outside the pleadings in, ironically, deciding the sufficiency of a pleading. There must be limits, and this Court should define them.

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of Appeals based its ruling. First, in 1999-2003, ConocoPhillips had no "ongoing multibillion dollar operation in the Timor Gap" for Oceanic to "usurp" or "disrupt." Pet. App. at 12a-14a. Second, there was no "long-standing, extremely lucrative collaboration" between ConocoPhillips and Australia that Australia would fight to preserve, in the Timor Gap or elsewhere. *Id.* at 12a. Third, there was no reason for Australia to refuse to acquiesce in the replacement of ConocoPhillips (if any acquiescence were required). These factual errors are further discussed at pp. 22-25 *infra*.

The second issue concerns the apparent imposition, by the Fifth Circuit, of a requirement that plaintiffs anticipatorily plead defensive matter even before any defenses have been asserted. There would seem to be no basis for that gloss on Rule 8 – certainly not in Rule 8 itself – and the consequences of such a ruling would be so widespread that this Court's review is not only warranted but necessary.

Barring further guidance on these two issues, rogue courts will continue to misapply these cases, and continue to generate more significant (and less easily – dismissed) criticism from the legal profession[24] and from within the halls of Congress.[25] This case, therefore, provides an opportunity to save *Twombly* and *Iqbal* from themselves, if they may be saved, and to announce a new standard if they may not. And that is the third issue that Oceanic poses to this Court: In light of their more problematic aspects, should this Court reconsider its commitment to *Twombly/Iqbal* altogether?

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[24] *See, e.g.*, Testimony of Arthur R. Miller before the Subcommittee of the Constitution, Civil Rights and Civil Liberties, Oct. 27, 2009, Serial No. 111-36 at 6-30, available at http://judiciary.house.gov/hearings/hear_091027_1.html.

[25] Both houses of Congress have held hearings concerning the effect of *Twombly* and *Iqbal*. *See generally*, Serial No, 111-36, *Access to Justice Denied: Ashcroft v. Iqbal*, Hearing before the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the Committee on the Judiciary, Oct. 27, 2009, transcript available at http://judiciary.house.gov/hearings/hear_091027_1.html; *Evaluating the Supreme Court's Decisions in Twombly and Iqbal*, Hearing before the Senate Judiciary Committee, Dec. 2, 2009. available at http://judiciary.senate.gov/hearings/hearing.cfm?id=4189.

A. *CERTIORARI* IS APPROPRIATE TO ADDRESS AND DEFINE THE SCOPE OF THE *TWOMBLY/IQBAL* PLAUSIBILITY ANALYSIS, PARTICULARLY INSOFAR AS THOSE DECISIONS CAN BE READ TO PERMIT COURTS TO VENTURE OUTSIDE THE PLEADINGS, OUTSIDE THE RULES OF EVIDENCE, AND OUTSIDE THE RECORD, IN PASSING JUDGMENT ON THE PLEADINGS.

1. The Structural Flaw In The *Twombly/Iqbal* Plausibility Regime.

This Court should grant *certiorari* because the Fifth Circuit's decision exposes deep and important structural flaws in the pleading doctrines announced in the *Twombly* and *Iqbal* decisions. The major such flaw arises from *Iqbal's* invitation to the district courts to judge pleadings (and grant or deny access to the nation's courts) on the basis of matters outside the pleadings, outside the rules of evidence, and outside the court record, *viz*, on the basis of their "experience" and "common sense."[26]

As a practical matter, that invitation, as applied in cases like this one, creates numerous conflicts with the decisions of this Court, and with the decisions of the federal courts below. Those conflicts are all-too evident in this case, in which the behaviors blessed by the Fifth

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[26] Iqbal, 129 S. Ct. at 1950 ("Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, is a "context-specific task that requires the reviewing court to draw upon its judicial experience and common sense.").

Circuit's approach to *Twombly* and *Iqbal* collide head – on and often not only with federal case law, but with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the norms governing the accepted and usual course of federal judicial proceedings, and even basic notions of civil justice.

This Court should therefore grant *certiorari*, first and foremost, in order to address and resolve those conflicts, and to resolve important questions about the permissible scope of the *Twombly/Iqbal* plausibility inquiry. The Fifth Circuit has resolved them in a manner that undermine those decisions and actively foster a lack of uniformity in the law of federal pleading. Decisions regarding the scope of *Twombly/Iqbal* must therefore be made by this Court, which authored the doctrines and now must shepard the federal courts below toward uniform application.

2. **The *Twombly/Iqbal* Definition Of Plausibility Cannot Be Stretched So Far As To Permit One Federal Judge To Strike A Complaint – As "Implausible" – That Has Twice Been Sustained By Another.**

In *Twombly*, this Court imposed a "plausibility" standard on Rule 8 pleading and obligated a plaintiff to plead "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of the allegations made in the complaint. Then, in *Iqbal*, this Court elaborated on its *Twombly* ruling by holding that a claim is "plausible" when "the plaintiff pleads factual content that allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged."[27]

After three years in the District Court for the District of Columbia, Judge Sullivan not only found that Oceanic had sufficiently alleged "a legally cognizable injury," Pet. App. at 57a, but ordered ConocoPhillips to answer (which it did),[28] ordered the parties to develop a discovery control plan (which they did),[29] and then opened discovery upon the entry of his transfer order.[30] By the time of the transfer, Oceanic had even served two (never-answered) discovery requests.[31]

Then, after one post-transfer "status conference" in the Texas court, discovery and the entire case were shut down for a year, and the case was dismissed on a Rule 12(c) judgment on the pleadings that was replete with facts of unknown provenance and wholly hostile to the Plaintiff's case.

When the Fifth Circuit affirmed that judgment on the pleadings, and did so in the name of *Twombly* and *Iqbal*, it could not have provided a clearer illustration of *Twombly/Iqbal's* support for a non-uniform system of idiosyncratic civil justice. For that is the logical and unfortunate result of interpreting Rule

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27 *Twombly*, 550 U.S. at 564-65. *Iqbal*, 129 S. Ct at 1949.

28 Pet. App. at 165a.

29 DE 103.

30 Pet. App. at 90a.

31 DE 104-105.

8, a rule about pleadings, to authorize a reviewing judge to go outside the pleadings, outside the record, outside the Rules of Civil Procedure, and outside the Rules of Evidence to find those facts that are most congenial to his or her "experience" or "common sense."

Here, two judges heard the same arguments regarding the same complaint and Oceanic lost its access to the courts solely because the judges had changed. The facts that the case had not changed, the complaint had not changed, and Rule 8 had not changed meant nothing. In affirming that process, the Fifth Circuit only proved the correctness of those *Twombly/Iqbal* critics who have feared that when every judge has different "experiences" and every judge has an entirely different view of what constitutes "common sense," federal justice will become unpredictable, inconsistent, idiosyncratic and – as in this case – unjust.

3. ***Twombly* And *Iqbal* Do Not Permit A Court To Resolve Contested Factual Matters On the Pleadings.**

It is well settled that a motion for judgment on the pleadings is "designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially-noticed facts."[32] And it is also well-established that "[t]he motion for a

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[32] *See, e.g., Herbert Abstract Co., Inc. v. Touchstone Properties, Ltd.*, 914 F.2d 74, 76 (5th Cir. 1990); *J.M. Blythe Motor Lines Corp. v. Blalock*, 310 F.2d 77, 78-79 (5th Cir. 1962).

judgment on the pleadings only has utility when all material allegations of fact are admitted in the pleadings and only questions of law remain."[33]

This action was, on its face, wholly unsuitable for adjudication as a Rule 12(c) motion for judgment on the pleadings because:

- Judge Sullivan had already applied the same standards to sustain the very same pleading – not once, but twice.

- The material facts were not admitted, but disputed. Indeed, the most cursory review of Defendants' Answer to Plaintiffs' Second Amended Complaint[34] shows that *almost nothing is admitted*, including the allegations and facts relative to causation, injury and damages.

- Nothing in the Rule 12(c) motion granted by Judge Hughes and endorsed by the Court of Appeals suggests that it could be resolved by "looking to the substance of the pleadings and the judicially noticed facts." To the contrary, the motion papers reflected major disputes over virtually

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[33] 5C Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1367 (2008 Westlaw Edition); *see, e.g., Voest-Alpine Trading USA Corp. v. Bank of China*, 142 F.3d 887, 891 (5th Cir. 1998)

[34] *See* Pet. App. at 93a (Second Amended Complaint); Pet. App. at 165a (ConocoPhillips' Answer).

every legal or factual aspect of this litigation.

- Finally, nothing in the pleadings, or in the documents that Defendants sought to illicitly inject into their Rule 12(c) motion for judgment on the pleadings,[35] remotely suggested that "only questions of law remain," though that is, as noted above, the standard.

Like most Rule 12(c) motions, this matter was simply inappropriate for adjudication on a Rule 12(c) basis.[36] Accordingly, if the Rule 12(c) motion was to be adjudicated, it would have to be adjudicated as a motion for summary judgment, with all of the protections afforded a plaintiff in that context. That is what Rule 12(d) requires.[37]

That did not happen here. Instead, Judge Hughes dismissed the case summarily, without

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[35] *See* DE 155.

[36] That is the fate of most Rule 12(c) motions. *See* 5C Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1371 (2008 Westlaw Ed).

[37] Rule 12(d) provides, in full:

> **(d) Result of Presenting Matters Outside the Pleadings**. If, on a motion under Rule...12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

discovery or any proceeding beyond a status conference, without creating a reviewable record, and without regard to Rule 12(d)'s protections. The Court of Appeals erred in sanctioning those errors, and in doing so on the authority of *Twombly* and *Iqbal*. Rule 12(d) is intended to preclude a court from resolving contested fact issues on the pleadings, and *Twombly/Iqbal* does not write it out of the Federal Rules of Civil Procedure.

4. *Twombly* And *Iqbal* Do Not Permit A Court To Find A Plaintiff's Claims "Implausible" On The Basis Of Alleged "Facts" – Especially Demonstrably False Facts – From Sources Outside the Pleadings.

The panel's conclusions were premised on significant factual misapprehensions as to: (1) the state of East Timorese – Australian relations in 2000-2003, the most relevant period; (2) the state of oil and gas development in the Timor Gap (by ConocoPhillips or anyone else) at that time; and (3) the relationship between Australia and ConocoPhillips during that period. Unfortunately, those "facts" first appeared in the panel's opinion, *viz.*, in a context in which it was too late to confront them with actual evidence.

First, though the panel's dismissal ruling wrongly assumes otherwise, the Timor Gap was not developed at the time, and the only producing area in the Gap was the EKKN area developed by another producer.[38] ConocoPhillips had not only not developed

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[38] The EKKN ("Elang Kakatua Kakatua North") light oil field had been developed by BHP. Phillips purchased BHP's

any field in the area from exploration to production in the ten plus years in which it had held leases in the area, it was refusing to develop them in 2000-2003 – absent East Timorese compliance with ConocoPhillips' agenda.[39]

There was also no pipeline to Australia or anywhere else from any Timorese fields, no LNG plant in Australia or anywhere else to process Timor Sea gas, and no natural gas production of any kind in the Timor Gap. None of that would occur until 2006, though natural gas liquids from the (Bayu-Undan) field did begin to be produced in 2004.[40] In short, there were no extremely "lucrative" "multi-billion dollar" ConocoPhillips' oil and gas operations in the Timor Gap in 2000-2003.

Nevertheless, despite their falsity, these central misperceptions led to harsh and allegedly factual

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interests in 1999.

[39] There is no genuine dispute that Phillips was, in 2000-2003, refusing to develop Timor Gap properties until it obtained the legal and tax concessions it wanted. *See* Pet. App. at 127a, 131a-132a ¶¶ 96, 105, 108 (complaint) and *id.* at 188a, 190a-191a ¶¶ 96, 105, 108) (corresponding answers to those allegations)

[40] ConocoPhillips admits this. See Pet. App. At 193a, ¶ 111. These facts and the other facts and dates referenced above can be easily verified on ConocoPhillips' website. *See* http://www.conocophillips.com/EN/about/worldwide_ops/country/Australia/pages/Australia.aspx (re "Australia and Timor-Leste") and http://www.conocophillips.au/en/ business/production/dlng/pages/index.aspx (re the Darwin LNG plant). These facts and dates may also be verified by reference to the contemporary and more detailed Phillips (and later ConocoPhillips) SEC filings.

accusations by the Court of Appeals – *e.g.*, to charges that Oceanic sought to disrupt ConocoPhillips' "extremely lucrative" oil and gas operations, Pet. App. 13a, that Oceanic sought "to displace ConocoPhillips' ongoing multibillion dollar operation in the Timor Gap," *id.* at 12a, and that Oceanic was a "usurper." *Id.* at 14a. Constrained by the pleading, and by the fact that these amazing fact findings did not arise until after the Fifth Circuit had issued its ruling, Oceanic was powerless to rebut these newly-minted "facts".

As to Australia's ability to stop East Timor's consideration of another contractor, there was in fact no East Timorese-Australian treaty in place between 1999-2003, and no dispositive Australian control over anything in the disputed areas of the Timor Sea. There were only interim agreements negotiated, on an *ad hoc* basis, between Australia and those who, at any given time, purported to represent East Timor. Everything was negotiable once East Timor became self-governing, and nothing was dictated by Australia. The East Timorese-Australian relationship was then, as it is now, very fluid and always evolving.

As to ConocoPhillips' relationships, in 1999-2003, there were none that would preclude the granting of the requested interests to Oceanic. East Timor knew ConocoPhillips only as a contractor that had obtained its interests from the occupying Indonesians, had failed to develop the Bayu-Undan field, continual to pay the Indonesians royalties on EKKN oil long after East Timor had declared independence, and as a contractor that had been and was continuing to be very demanding. (*E.g.*, it was, at the time, refusing to develop Bayu-Undan unless it obtained more

exploration and production and tax concessions from East Timor, as well as East Timorese acquiescence in a development plan that had little economic benefit for East Timor). [41]

As to ConocoPhillips' relationship with Australia, there was no "long-standing, extremely lucrative collaboration" between ConocoPhillips and Australia as the panel *opinion* assumed.[42] That was not only because ConocoPhillips was not producing oil and gas, but because it had not been operating in Australia for years.[43]

The long and the short of it was that, in 1999-2003, all options were open, and there was no reason (absent the bribery of Alkatiri) why East Timor and Oceanic could not have achieved a mutually beneficial relationship that might also have benefited Australia. ConocoPhillips was just a contractor, and contractors – especially difficult contractors in a largely undeveloped field – can be replaced. The labeling of that scenario as "implausible" thus turns on errant factual analyses, almost entirely drawn from outside of, or contrary to, the pleadings, that should not have been made at the pleading stage.

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[41] *See supra* n. 39.

[42] *See* Pet. App. at 13a.

[43] According to ConocoPhillips' own history of its involvement in the region, Conoco had exited Australia in 1996, and Phillips had done so in 1984 (before returning in 1991). *See* DE 148 at Section 2.

5. *Twombly's* And *Iqbal's* "Plausibility" Requirement Cannot Be Read Or Implemented In a Manner That Undermines The Authority Of Other Rules of The Federal Rules of Civil Procedure, Or The Federal Rules of Evidence.

That the panel misapplied *Twombly* and *Iqbal* is demonstrated by the irreconcilable conflicts between the panel's analysis and other rules, including those rules governing evidence, summary judgments, and the pleading of state law claims.

a. *Twombly/Iqbal* And The Federal Rules of Evidence.

The "plausibility" standard employed by the Court of Appeals conflicts with protections otherwise afforded by the Federal Rules of Evidence. That is unfortunate. At the heart of the jury trial system is the tenet "that cases be decided only on the basis of evidence produced in open court subject to the procedural protections of the adversary system."[44]

That cornerstone of our civil justice system is compromised when protections afforded by the Federal Rules of Evidence are displaced by a judicial invocation of "experience" and "common sense" to resolve heated factual contentions in the manner that occurred below. While the parties disputed matters such as Australia's interest in blocking Oceanic and its ability to do so, the courts below summarily decided it was factually implausible to them that Australia could have done

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[44] 21 CHARLES ALAN WRIGHT AND KENNETH W. GRAHAM, Federal Practice & Procedure § 5102 at 459.

otherwise. But they did so on the basis of factual assumptions and findings of no known provenance, and depressingly low quality, only highlighted the need for the quality control that the Rules of Evidence provide.

The procedural protections embedded in the Federal Rules of Evidence matter in circumstances like these. Consider, for example, whether issues of Australia's policies and attitudes toward East Timor, Timor Sea oil and gas, ConocoPhillips, and Oceanic could ever have been the subject of judicial notice (and therefore of evidentiary value) under Rule 201. Those are not issues that are "not subject to reasonable dispute," and they are not issues that are either "generally known" in the Southern District of Texas nor capable of accurate and ready determination by reference "to sources whose accuracy cannot reasonably be questioned." *See* Fed. R. Evid. 201(b).

Moreover, if anyone ever had been inclined to attempt to categorize so many complex facts regarding Australian-East Timorese issues as subject to judicial notice, Oceanic would have had an opportunity to be heard in court regarding that effort. *See* Fed. R. Evid. 201(e). The mantra of "experience" and "common sense" can never allow reviewing courts to side-step these protections, and make decisions that functionally resolve factually disputed matters. Federal Rule of Civil Procedure 8 does not obviate the Rules of Evidence.

Yet that is what happened here, where the district court and the Court of Appeals both relied on and cited numerous "facts" that are not set forth in the complaint or elsewhere in the pleadings (and not

subject to judicial notice) as adjudicative and even case-dispositive facts. And they did so despite the fact that the sources of those facts is unknown and their accuracy is sharply disputed. The rules of evidence cannot be so lightly set aside. Their goal – "that the truth be ascertained and proceedings justly determined"[45] – is the goal of the civil justice system.

b. ***Twombly/Iqbal* And Rule 56.**

The flaws in the panel's plausibility analysis, and perhaps in *Twombly/Iqbal,* are further demonstrated by comparing the procedure that resulted in the Oceanic dismissal with the Rule 56 summary judgment procedure that must be employed when facts outside the record are implicated.

Had the matter been addressed as a motion for summary judgment, the parties and the court would not only have been constrained by the rules governing summary judgments and summary judgment evidence, they would also have been afforded the opportunity to develop their positions through discovery.[46] Any summary judgment ruling would have been made part of the record, as would the evidentiary basis for that ruling, and that process would leave a record by which the basis for the decision could be tested.

Parties may always argue whether a summary judgment record supports or fails to support a

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[45] FED. R. EVID. 102.

[46] *See Celotex Corp. v. Catrett,* 477 US. 317, 327 (1986); FED R. CIV. P. 56(f)

summary judgment ruling. Without that objective record, no objective basis exists to test a judge's invocation of his or her common sense, and experience as a basis for disposing of a claim as implausible becomes unreviewable. That is a problem at the district court level, and an even bigger problem on appeal, which only highlights the melee that arise when rules like Rule 56 fall before *Twombly/Iqbal*.

c. *Twombly/Iqbal* And The Pleading of State Law Claims In Accordance With The Official Forms.

Absent case-relevant statutory guidance on the subject, there are no special requirements for pleading "proximate cause" in federal court.[47] Under Rule 8(a)(2), a plaintiff need only plead "a short and plain statement of the claim showing that the pleader is entitled to relief,"[48] *i.e.*, one that "gives the defendant fair notice of what the claim is and the grounds on which it rests."[49] Nothing in the Federal Rules requires anything more for the pleading of proximate cause.[50]

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[47] This Court has expressly held that allegations of proximate cause are to be measured against conventional Rule 8 standards. *See Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 346 (2005).

[48] *See* FED. R. CIV. P. 8(a)(2).

[49] *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007) (quoting *Twombly*, 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

[50] *See, e.g., Ashe v. Corley*, 992 F.2d 540, 545 (5th Cir. 1993) (no basis for requiring special pleading of proximate causation in a Section 1983 claim); *In re Burzynski*, 989 F.2d 733, 739 (5th Cir.

However, the Federal Rules' guidance does not end there. To the contrary, the form complaints collected in the Appendix to the Federal Rules of Civil Procedure provide numerous illustrations of the proper pleading of causation (including proximate causation) in state and federal law claims asserted under the Federal Rules.[51] Moreover, Rule 84 could not be clearer that claims pleaded in accordance with those Official Forms "suffice under these rules" – as those forms "illustrate the simplicity and brevity that these rules contemplate."[52]

There can be no doubt that Oceanic pleaded its state law claims properly, and in accordance with Rules

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1993) (as to tortious interference claims under Texas law, enough to recite that actions of defendants proximately caused injury); *see also Lopez v. Rica Foods*, 277 Fed. Appx. 931, 2008 WL 2043510 at *2 (11th Cir. 2008) (investors not required to plead proximate causation as to common law fraud/misrepresentation claims).

[51] *See* FED. R. CIV. P. Forms 10, 15, 16, 17, 18, 20, 21, 61 (no specific causation allegation required . . . "therefore" following a statement of the loss is enough of an allegation); Forms 11 and 12 ("as a result the plaintiff was injured . . ." is sufficient pleading of causation); Form 13 (sufficient to state that "defendant's negligence caused the plaintiff to be injured . . . as a result, the plaintiff was physically injured. . . ."); Form 14 (sufficient to note "as a result of the defendant's negligent conduct. . . ."); Form 19 (defendant's continuing conduct as "causing irreparable damage" is enough).

[52] FED. R. CIV. P. 84. *See also McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1360 (Fed. Cir. 2007) (allegation that is consistent with Form 16 meets Rule 8 requirements); *Guidry v. U.S. Tobacco Co., Inc.*, 188 F.3d 619, 632 (5th Cir. 1999) (the forms in the Appendix of Forms are sufficient under the Rules, including Rule 8).

8(a)(2) and 84 and the Official Forms.[53] There can also be no doubt that Oceanic's pleading gave ConocoPhillips fair notice of the claims against it and the grounds on which those claims rested. Not surprisingly then, Judge Sullivan twice sustained those claims over three years of defense efforts to dismiss them for failure to state a claim.[54]

The surprise came when the District Court and the Court of Appeals nevertheless dismissed those same state law claims, on the pleadings, for an alleged failure to meet Rule 8 standards for pleading proximate cause.[55] As no proximate cause pleading of any kind is required under the Federal Rules, the Official Forms, or the case law interpreting both, and proximate cause actually *was* pleaded, – that judgment on the pleadings simply cannot be reconciled with the law applicable to judgments on the pleadings.

The dismissal can only be explained, even if it cannot be reconciled with the Federal Rules, by reference to three key facts. First, this "judgment on the pleadings" has nothing to do with the pleadings. Second, it is simply an illicit *sua sponte* summary judgment, improperly rendered at the pleadings stage. And third, it cannot be saved by wrapping it in the language of *Twombly* and *Iqbal*. The alleged power to

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[53] *See* Pet App. at 96a-97a (¶¶ 4, 6); 153a-154a (¶¶ 158-160); 156a (¶¶ 168-170); 157a (¶¶ 174-175); 159a (¶¶, 183, 185); 160a (¶ 190); 161a (¶¶ 194-195).

[54] Pet. App. at 77a-78a, 89a-90a.

[55] Pet. App. at 10a-11a, 32a.

determine the plausibility of facts asserted in a complaint cannot extend to deciding the plausibility of facts that need not be pleaded at all.

This Court should grant *certiorari*, at least in part, to save *Iqbal* and *Twombly* from themselves. More importantly, it should grant certiorari to save Rules 8, 12, 56, 84, the Official Forms, the Federal Rules of Evidence, and the law of RICO/antitrust standing from such overreaching applications of *Iqbal* and *Twombly*.

B. *CERTIORARI* IS APPROPRIATE TO ADDRESS AND DEFINE THE EXTENT TO WHICH *TWOMBLY* AND *IQBAL* NOW REQUIRE THE PLAINTIFF TO PLEAD DEFENSIVE MATTER.

The petition should also be granted to resolve the conflict between the panel's ruling and *Twombly's* and *Iqbal's* holdings regarding the relevance of potential defenses to the analysis of a complaint's sufficiency.

Oceanic's complaint unquestionably contained factual allegations that set forth every element of its claims, as well as those allegations that, if supported by the facts, would entitle it to relief. It set forth the fluid state of affairs involving East Timor during the period between 1999 and 2003 as it transitioned from an occupied to an independent country, the terms of Oceanic's proposals for developing pursuant to the sought oil and gas contracts, the bribes paid by ConocoPhillips to foreclose consideration of Oceanic's bids, and the resulting refusal of East Timor to consider

Oceanic's bids and its corresponding award of contracts to ConocoPhillips. Those allegations gave rise to the reasonable inference that, but for the bribes, Oceanic's bids would have been considered and then accepted by East Timor.

Based upon those allegations, it is not surprising that the District Court for the District of Columbia denied ConocoPhillips' motions to dismiss and concluded that the allegations stated a legally cognizable injury.[56] Only by reviewing the claims through an improper filter, one that required allegations in the complaint showing that Oceanic actually would overcome defenses that had not been asserted at the time the complaint was filed, did the Fifth Circuit reach a contrary and erroneous decision.

With narrow exceptions not applicable here, the Federal Rules in general and Rule 8 in particular do not require plaintiffs to anticipate defenses, or to preemptively "plead around" those defenses that have been anticipated.[57] The existence of a potential defense, until proven with legally valid evidence, does not limit a plaintiff's claim, or establish the inadequacy of a plaintiff's complaint.

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[56] Pet. App. at 56a-57a.

[57] *See, e.g., U.S. v. Northern Trust Co.*, 372 F.3d 886, 888 (7th Cir. 2004); *Memphis Tennessee Area Local Postal Workers Union v. Memphis*, 361 F.3d 898, 902 (6th Cir. 2004).

1. **Neither *Twombly* Nor *Iqbal* Authorize A Reviewing Court To Base Its Plausibility Analysis On The Defense Prospects For Success.**

In *Twombly*, this Court reaffirmed that "when a complaint adequately states a claim, it may not be dismissed based on a district court's assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the fact finder."[58]

Here there can be no doubt that Oceanic's complaint adequately stated a claim, also no doubt that it was dismissed because the reviewing court concluded that Oceanic would be unable to prove its claim in the face of defenses that would be factually contested in the pleadings, and at trial. In appraising Oceanic's claims on the basis of another's defenses to those claims, the Fifth Circuit's decision conflicts with *Twombly* and *Iqbal*, and stretches them beyond any point sanctioned by this Court.

Of the courts to review Oceanic's complaint, only one (the District Court for the District of Columbia) focused on whether the factual allegations in Oceanic's complaint stated a plausible claim for relief. In contrast, the Fifth Circuit focused on whether it believed Oceanic would ultimately succeed. Thus, under the guise of a *Twombly* analysis, it assessed the plausibility of Oceanic's ability to overcome defenses that had been pleaded long after the complaint had

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[58] *Twombly*, 127 S. Ct. at 1969 n.8 (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

been filed, but well before those defenses were litigated or proven.

It has long been this Court's directive, repeated in *Twombly*, that a court must not dismiss a well-pleaded complaint even if the court disbelieves the plaintiff's allegations or if it appears ultimate recovery is remote and unlikely.[59]

These directives were violated when the courts below dismissed the claims upon the factual determination that there was only one plausible position that Australia would have taken regarding the award of oil and gas exploration and production rights to anyone but ConocoPhillips. Neither *Twombly* nor *Iqbal* authorize a reviewing court to inject such matters into the equation when evaluating the sufficiency of a complaint.

2. The Panel Dismissed This Case For Failing to Plead A Condition Subsequent That Oceanic Had No Obligation To Address In Its Pleadings.

Australia's position as to contracts in the Timor Gap (whatever it may have been) should have had no bearing whatsoever on whether Oceanic satisfied its pleading burdens under Rule 8 for the simple reason that Oceanic had no burden to plead (or speculate as to) Australia's position in the complaint. Nor would it have

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[59] *Twombly*, 127 S. Ct. at 1965 (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508 n.1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327 (1989); and *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

been Oceanic's burden to prove at trial that Australia's approval could or would have been obtained. Rather, under well-established law, ConocoPhillips would assume any burden to plead and prove that such approval could *not* be obtained. This is because a requirement that Australia approve a contract between Oceanic and East Timor would be a condition subsequent, not a condition precedent, to any East Timorese award of production sharing contracts.

A condition subsequent is a condition that, if it occurred, would extinguish the contractual obligation, but would not prevent a binding obligation from being formed in the interim.[60] Of course, any Australian government approval requirement for an Oceanic-East Timorese agreement would be a condition subsequent to that agreement, and would not at all preclude the formation of the East Timor-Oceanic agreement. Moreover, assuming Australia's approval of a contract between Oceanic and East Timor was legally required (which it was not), the Court of Appeals' ruling would still be erroneous.

The effect of properly characterizing Australian governmental approval as a condition subsequent is

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[60] For example, where contractual obligations depend upon the approval of a governmental entity to the contract, such a condition is "a 'condition subsequent' that, if it occurred, would extinguish the defendant's contractual obligation...." *United States v. Standiford*, 148 F.3d 864, 868 (7th Cir. 1998) (citing *United States v. Hyde*, 520 U.S. 670, 678 (1997)). In *Hyde*, this Court concluded that the requirement that a court approve a plea agreement was in the nature of a condition subsequent, and did not preclude a binding obligation from being formed in the interim.

dispositive. A plaintiff like Oceanic need not plead, and has no burden to prove, compliance with conditions subsequent, and the burden of pleading and proving the occurrence or non-occurrence of the condition subsequent falls on the defense.[61]

In this context then, it could not be clearer that Oceanic never had *any* duty to plead *anything* as to what Australia might do if Oceanic reached the agreements it sought with East Timor. When the panel overlooked this aspect of the law of pleading, it erred seriously. Nothing in *Twombly* or *Iqbal* changes that fact.

3. The Consideration Of Potential Affirmative Defenses In Determining The Plausibility Of A Complaint Will Fundamentally Alter What Must Be Pleaded To Comply With Rule 8

If a plaintiff is to be faulted, and have its claim for relief dismissed for failing to anticipate and affirmatively plead facts counter to *any potential defense that may later arise*, then the ongoing vitality of the simple notice pleading regime set forth in Rule 8 and the Federal Rules generally has been turned on its head. If *Twombly* and *Iqbal* had that effect Rule 8(a) has become something far different, far less predictable, and far less capable of giving guidance to those seeking relief in the nation's courts.

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[61] *See, e.g., Pruitt v. Hardware Dealers Mut. Fire Ins. Co.*, 112 F.2d 140, 142 (5th Cir. 1940) (burden on defendant to prove non-occurrence of a condition subsequent); *BJC Health Sys. v. Columbia Cas. Co.*, 478 F.3d 908, 914 (8th Cir. 2007) ("defendants typically have the burden of proving the occurrence of conditions subsequent").

Any evaluation of the sufficiency of a complaint should be restricted to an analysis of the pleading under review, and not measured against matters extrinsic to that claim. Here, the court dismissed Oceanic's claims, and thereby deprived it of its access to the courts and its constitutional right to jury trial, based on an idiosyncratic analysis (of some undisclosed sort) of the facts regarding Australia and regarding its relationships with the East Timorese, with ConocoPhillips, and with Oceanic.

None of those "facts" were elements of Oceanic's causes of action; they were at best matters of potential relevance to ConocoPhillips' various lack-of-causation defenses. There is no obligation to plead such defense-related matter to be found in Rule 8. The fact that Oceanic's case was dismissed for failing to plead such matter is a significant distortion of Rule 8 that cannot be extended without completely transforming Rule 8 into a caricature of itself. Rule 8 thus becomes a trap for the unwary plaintiff – one who seeks to plead what he knows about his claims, and loses those claims because he failed to anticipate what another may later decide to say in response.

C. IF THE PLAUSIBILITY ANALYSIS ANNOUNCED IN *TWOMBLY* AND *IQBAL* CANNOT BE MADE CONSISTENT WITH THE OTHER FEDERAL RULES OF CIVIL PROCEDURE, THE FEDERAL RULES OF EVIDENCE, AND THE CASE LAW INTERPRETING BOTH, AND CANNOT BE MADE CONSISTENT WITH THE CONSTITUTIONAL EXPECTATION OF OPEN COURTS, THIS COURT SHOULD ABANDON THAT PLAUSIBILITY ANALYSIS.

In its recent opinion in *Pearson v. Callahan*, 129 S. Ct 808 (2009), this Court revisited its approach to resolving government officials' qualified immunity claims, determined that the existing judge-made approach to resolving the question was problematic, and abandoned the approach it had established in *Saucier v. Katz*, 533 U.S. 194 (2001). In so doing, this Court observed that the doctrine of *stare decisis* should not be understood to bar such a change in approach:

> Although "[w]e approach the reconsideration of [our] decisions ... with the utmost caution," "[*s*]*tare decisis* is not an inexorable command." Revisiting precedent is particularly appropriate where, as here, a departure would not upset expectations, the precedent consists of a judge-made rule that was recently adopted to improve the operation of the courts, and experience has pointed up the precedent's shortcomings.[62]

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[62] *Id.* at 816 (citations omitted).

The facts of this case expose the shortcomings of the *Twombly/Iqbal* regime. Accordingly, if the shortcomings of the judge-made rules announced in those cases cannot be overcome by modification, Oceanic respectfully requests that this Court revisit those precedents, and, if warranted, return to the *Conley v. Gibson* "fair notice" paradigm or some variant thereof, that will serve both the needs of the federal courts and the needs of those who seek relief in them.

CONCLUSION.

This Court should grant this petition for certiorari in all respects.

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No.08-20338

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCEANIC EXPLORATION COMPANY, A DELAWARE CORPORATION; PETROTIMOR COMPANHIA DE PETROLEOS, SARL, A CORPORATION ORGANIZED UNDER THE LAWS OF PORTUGAL,
Plaintiffs-Appellants

v.

PHILLIPS PETROLEUM COMPANY ZOC, A DELAWARE CORPORATION; PHILLIPS PETROLEUM COMPANY INDONESIA, A DELAWARE CORPORATION; PHILLIPS PETROLEUM (96-20) INC., A DELAWARE CORPORATION; PHILLIPS PETROLEUM PRODUCTION INDONESIA INC., A DELAWARE CORPORATION; PHILLIPS INDONESIA INC., A DELAWARE CORPORATION; PHILLIPS INTERNATIONAL INVESTMENT INC., A DELAWARE CORPORATION; CONOCOPHILLIPS AUSTRALIA PTY LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS AUSTRALIA GAS HOLDINGS PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS JPDA PTY. LTD., AN

AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS PIPELINE AUSTRALIA PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS STL PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS WA-248 PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-12) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-13) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-16) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-19) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-20) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-21) PTY. LTD., AN

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Plaintiffs-Appellants

v.

PHILLIPS PETROLEUM COMPANY ZOC, A DELAWARE CORPORATION; PHILLIPS PETROLEUM COMPANY INDONESIA, A DELAWARE CORPORATION; PHILLIPS PETROLEUM (96-20) INC., A DELAWARE CORPORATION; PHILLIPS PETROLEUM PRODUCTION INDONESIA INC., A DELAWARE CORPORATION; PHILLIPS INDONESIA INC., A DELAWARE CORPORATION; PHILLIPS INTERNATIONAL INVESTMENT INC., A DELAWARE CORPORATION; CONOCOPHILLIPS AUSTRALIA PTY LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS AUSTRALIA GAS HOLDINGS PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS JPDA PTY. LTD., AN

AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS PIPELINE AUSTRALIA PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS STL PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS WA-248 PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-12) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-13) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-16) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-19) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-20) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-21) PTY. LTD., AN

AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS CO., A DELAWARE CORPORATION; CONOCOPHILLIPS, A DELAWARE CORPORATION; DARWIN LNG PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; PHILLIPS PETROLEUM CO., ZOC PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; TOKYO TIMOR SEA, PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA,
Defendants-Appellees.

March 30, 2009 argued

Nov. 6, 2009, Decided

COUNSEL: For Plaintiffs-Appellees: Allan B. Diamond, Diamond McCarthy, LLP, Houston, Texas, James D. McCarthy, Diamond McCarthy, LLP, Dallas, TX

For Defendants-Appellees: Brant Warren Bishop, Kirkland & Ellis, Washington, DC, Martin D. Beirne, Beirne, Maynard & Parsons, Houston, TX, Herbert Maurice Wachtell, Wachtell, Lipton, Rosen & Katz, New York, NY, for Defendants-Appellees.

JUDGES: Before BARKSDALE, DENNIS, and ELROD, Circuit Judges.

PER CURIAM:*

Appellants Oceanic Exploration Company and Petrotimor Companhia de Petroleos, SARL (collectively, "Oceanic") appeal the dismissal, on a motion under Federal Rule of Civil Procedure 12(c) for judgment on the pleadings, of their Second Amended Complaint ("Complaint"). We agree with the district court that Oceanic failed to set forth a plausible theory of proximate causation and accordingly AFFIRM.

I. FACTS AND PROCEEDINGS

A. Background facts

We set forth the following facts as pleaded in the Complaint, assuming at the present stage, as we must, that they are true. *See Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir.2007). In 1974, Oceanic obtained an exclusive concession from Portugal to explore for and extract oil and gas in the Timor Gap. The Timor Gap is an area of seabed north of Australia and south of the eastern part of the island of Timor. Timor, in turn, is surrounded on all other sides by Indonesia. The Timor Gap is disputed territory. The border across surrounding ocean has been settled by treaty between Indonesia and Australia, but the boundary between East Timor and Australia has not been settled. At the time Oceanic obtained Timor Gap exploration rights from Portugal, East Timor was a Portuguese colony.

In 1975, Indonesia invaded and annexed East Timor, effectively thwarting Oceanic's rights in the Timor Gap. The United Nations refused to recognize the annexation, but Australia collaborated with Indonesia

to exploit oil and gas in the Timor Gap and surrounding areas. In 1989, Indonesia and Australia created a "Joint Authority" for this purpose.[1] The Joint Authority awarded Timor Gap exploration and extraction rights to Defendant-Appellee ConocoPhillips (hereinafter referring to ConocoPhillips and its relevant predecessors, subsidiaries, and affiliates). Since that time, ConocoPhillips has extracted large quantities of oil and gas from the Timor Gap and surrounding areas. At the time of the Complaint, known reserves in the Timor Gap were valued above $50 billion.

In 1999, East Timor obtained independence from Indonesia, creating an opportunity for reassessment of the Timor Gap relationships. The United Nations temporarily governed the country through an entity known as the United Nations Transitional Administration in East Timor ("UNTAET"). UNTAET agreed essentially to step into Indonesia's shoes as Australia's counterpart in administering and receiving revenues from the Joint Authority. At the same time, influential politicians in East Timor criticized the historical Australian-Indonesian arrangement as illegal and exploitative and stated that independent East Timor would not function as Indonesia's successor. The East Timor Constitution, which entered into force on May 20, 2002, stated that independent East Timor would not recognize "acts or contracts" regarding its natural resources that were entered into prior to the constitution's entry into force, unless they were "confirmed by the competent organs after the Constitution enters into force." E. Timor Const. art. 158, para. 3.

On May 20, 2002 (the same day that the constitution took effect), East Timor agreed to the Timor Sea Treaty with Australia. After satisfaction of various formalities, the treaty came into effect on April 1, 2003. It created a "Designated Authority" to replace the prior Joint Authority.[2] One of the Designated Authority's first acts was to enter into numerous production sharing contracts with ConocoPhillips, facilitating ongoing extraction efforts that were predicted to provide billions of dollars of revenue to East Timor. There was no bidding or reassessment; all Designated Authority production sharing contracts were awarded to organizations with previous contracts under the Australian-Indonesian Joint Authority.

Oceanic approached officials in East Timor and unsuccessfully attempted to persuade them to follow a different plan. This would have involved a suit in the International Court of Justice (ICJ), asking the court to declare a border between East Timor and Australia, such that East Timor would acquire sole rights over lucrative production areas in the Timor Gap. Oceanic engaged "[r]espected scholars on international boundaries," who "rendered opinions on the issue on Oceanic's behalf."[3] Oceanic presented the opinions to East Timor, and proposed to fund the litigation itself in exchange for "a revenue interest in the currently producing fields that would come within East Timorese sovereignty."[4] Oceanic also proposed to build an undersea natural gas pipeline from the Timor Gap to East Timor, to be used instead of a ConocoPhillips pipeline running to Australia. East Timorese officials gave Oceanic cursory attention and rejected the proposals. Australia shortly thereafter withdrew from the maritime boundary jurisdiction of the ICJ.

B. Proceedings and allegations

Oceanic has attempted by various means to claim a stake in the lucrative Timor Gap oil and gas operations, maintaining that ConocoPhillips illegitimately acquired its rights there. In the early 1990s, Oceanic supported an ICJ suit by Portugal, against Australia and Indonesia, to reassert rights over the Timor Gap. The ICJ ruled 14-2 that it could not reach the merits of the claim, because, as described in the Complaint, "Indonesia, like Australia later, would not submit to the jurisdiction of that court."[5] Oceanic has also attempted, in litigation in Australia and in earlier complaints in the present suit, to assert rights to Timor Gap oil and gas and proceeds, based on its concession from Portugal and its related research and exploration activities in the 1970s. These efforts have failed. Oceanic originally filed the current suit in the United States District Court for the District of Columbia. Prior to transferring the case to its current venue in the Southern District of Texas, the court in the District of Columbia dismissed numerous claims and required Oceanic to re-plead, counseling that it would "view with great suspicion any claims emanating from Portugal's colonial concession." Oceanic then filed the Complaint presently under consideration.

The current theory of the case is not based on historical interests related to the Portuguese concession. Rather, Oceanic asserts that East Timorese independence abrogated ConocoPhillips's rights in the Timor Gap, and that Oceanic was positioned to pull East Timor away from ConocoPhillips, but that ConocoPhillips prevented this by bribing East Timorese officials.

In particular, the Complaint revolves around Mari Alkatiri, "the leader of the largest East Timorese political party, and ultimately Prime Minister for East Timor."[6] As alleged,

> From August 30, 1999, until he was named Prime Minister of East Timor on April 14, 2002, Mari Alkatiri was the Chief Economic Affairs Minister for UNTAET. As Prime Minister, Alkatiri was concurrently the Minister for Development of the Environment. In addition, Alkatiri serves as the titular head of the Timor Sea Designated Authority.[7]

Oceanic alleges that "regardless of the title he may have held" at these various positions, Alkatiri effectively "had direct responsibility for all natural resources in East Timor" and was thus "able to influence" the award of production sharing contracts after the independence vote.[8] The Complaint quotes Alkatiri as stating that his political party "would not legitimatize a treaty between a thief [Indonesia] and the receiver of stolen goods [Australia]," and that "[w]e are not going to be a successor to an illegal treaty."[9] Based on these and similar statements, Oceanic alleges that "East Timorese political leaders, including [Alkitiri], were adamant that East Timor would not recognize any interests that had been awarded in the Timor Gap while Indonesia occupied East Timor, including the ConocoPhillips defendants' production sharing contracts."[10]

Oceanic alleges that Alkatiri and his political associates denied Oceanic an opportunity to bid against ConocoPhillips, despite their skepticism of the prior

treaty regime, because ConocoPhillips bribed Alkatiri and others. According to the allegations, ConocoPhillips delivered millions of dollars in cash and goods to East Timorese officials in secret transactions and transactions disguised as humanitarian aid. It did so, according to the Complaint, because it feared the political transition could upset its lucrative operations in the Timor Gap.

The Complaint asserts seven causes of action, but only five are still at issue, all arising out of the bribery allegation. They are for: (1) violation and (2) conspiracy to violate the Racketeering Influenced and Corrupt Organizations Act (RICO), (3) violation of the Robinson-Patman Act, and common law (4) intentional interference with prospective economic advantage and (5) unfair competition.[11] Oceanic seeks at least $10.5 billion in damages.

After the case was transferred to the Southern District of Texas, the district court granted ConocoPhillips's motion for judgment on the pleadings and dismissed Oceanic's claims, concluding that Oceanic failed to plead proximate causation. *Oceanic Exploration Co. v. ConocoPhillips, Inc.*, 2008 WL 1777003 (S.D.Tex. Apr.16, 2008). It accordingly entered a take-nothing judgment, leading to this appeal.

II. DISCUSSION

A. Standard of review and Rule 12(c) standard

We review a motion under Federal Rule of Civil Procedure 12(c) de novo. *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir.2008). The pleading standard for a

Rule 12(c) motion is the same as for a motion to dismiss under Rule 12(b)(6). *Id.* Under that standard, the issue is not whether the plaintiff will ultimately prevail, but whether it is entitled to offer evidence to support its claims. *Ferrer v. Chevron Corp.*, 484 F.3d 776, 780 (5th Cir.2007). We accept well-pleaded facts as true and construe the complaint in the light most favorable to the plaintiff, but we do not accept as true "conclusory allegations, unwarranted factual inferences, or legal conclusions." *Id.*

To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, --- U.S. ----, ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). In order for a claim to be plausible at the pleading stage, the complaint need not strike the reviewing court as probably meritorious, but it must raise "more than a sheer possibility" that the defendant has violated the law as alleged. *See id.* Furthermore, the factual allegations must be "enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. In determining whether a complaint states a claim that is plausible on its face, the court "draw[s] on its judicial experience and common sense." *Iqbal*, 129 S.Ct. at 1950.

B. Analysis

Like the district court, we conclude that Oceanic fails to properly plead proximate causation. Both parties have briefed proximate causation principally under legal authority related to RICO, and Oceanic presents no argument on appeal that any of its other claims could

survive dismissal on proximate causation grounds if the RICO claim does not. We accordingly analyze the issue under authorities applicable to RICO.

RICO is a criminal statute, but its § 1964(c) provides for civil damages for a party "injured in his business or property by reason of" a RICO violation. 18 U.S.C. § 1964. The Supreme Court determined in Holmes v. Securities Investor Protection Corp. that this requirement "incorporate[s] common-law principles of proximate causation." 503 U.S. 258, 267, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992). The Court described proximate causation as including a "demand for some direct relation between the injury asserted and the injurious conduct alleged." *Id.* at 268. "When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461, 126 S.Ct. 1991, 164 L.Ed.2d 720 (2006) (emphasis added).

In *Zervas v. Faulkner*, this court recognized proximate causation in the RICO context as an inquiry into "whether the conduct has been so significant and important a cause that the defendant should be held responsible ... taking into consideration such factors as the foreseeability of the particular injury, the intervention of other independent causes, and the factual directness of the casual connection." 861 F.2d 823, 834 (5th Cir.1988) (quoting *Brandenburg v. Seidel*, 859 F.2d 1179, 1189 (4th Cir.1988)). The causal link cannot "rest only on an overly attenuated chain of inferences." *See id.* at 837.

The district court below concluded that Oceanic failed to plead proximate causation because the alleged bribery, assuming it occurred, could only have caused the alleged harm to Oceanic by means of a highly improbable series of hypothetical events and decisions by the affected countries and entities. It determined that in order for Oceanic to prevail,

> [the] facts must be that if ConocoPhillips had not bribed East Timor: (a) East Timor would have chosen to abrogate the concessions, (b) Australia would have acquiesced, (c) East Timor would have reopened bidding, (d) Oceanic would have been permitted to bid, (e) Oceanic would have won the bid, and (f) Oceanic would have correctly developed the concession so that it was profitable.

2008 WL 1777003 at *4. The court concluded that the Complaint failed to adequately plead any of these circumstances.

We agree that at least some of these circumstances are not plausibly pleaded in Oceanic's Complaint, and conclude that Oceanic's failure to properly plead one of them in particular requires affirmance.[12] Oceanic's claims fail to rise above the speculative level, because they fail to address the interests and influence of Australia.

Oceanic repeatedly alleges that, absent bribery of Alkatiri, Oceanic would have been allowed to bid, and would successfully have bid, to displace ConocoPhillips's ongoing, multibillion-dollar operations in the Timor Gap. In particular, Oceanic claims in

conclusory terms that the East Timor Constitution abrogated ConocoPhillips's contracts, and that Alkatiri had unilateral power to determine whether those contracts would be renewed. These allegations fail the test of common sense plausibility when considered together with other allegations in the Complaint concerning Australia. The quoted portion of the East Timor Constitution merely indicates that contracts over East Timor's natural resources were obviated unless reaffirmed. But, as pleaded in the Complaint, the Timor Gap is a "gap" because the border between East Timor and Australia is uncertain-the two countries claim overlapping territory.

Assuming, absent bribery, that East Timor was willing to consider replacing ConocoPhillips with Oceanic, the Complaint presents no reason to believe Australia would have allowed this to happen. To the contrary, the Complaint describes Oceanic and Australia as adversaries at every historical stage. It alleges that Australia defied international opinion and subverted Oceanic's Portuguese concession by collaborating with Indonesia after an illegitimate invasion. It alleges that Oceanic supported an unsuccessful ICJ suit to declare that Portugal, rather than Indonesia and Australia, had rights to the Timor Gap. And it alleges, more recently, that Oceanic tried to convince East Timor to turn its back on Australia and build a pipeline to East Timor and a liquified natural gas facility on East Timorese soil, rather than accepting proceeds from a pipeline leading to a new facility in Australia. The Complaint provides no plausible grounds to believe Australia would have desired-or tolerated-disruption of its long-standing, extremely lucrative collaboration with ConocoPhillips in response to East Timor, which

Oceanic describes as a "new and impoverished island nation,"[13] replacing Indonesia as its counterpart across the Gap. Thus, even assuming ConocoPhillips attempted to influence East Timor through bribery, the Complaint provides no plausible grounds to conclude that, absent such bribery, Oceanic could have usurped ConocoPhillips's operations.

Indeed, the Complaint implicitly acknowledges that Oceanic had no genuine expectation of disrupting Australia's relationship with ConocoPhillips; it instead alleges that Oceanic tried to convince East Timor to start a formal border dispute and claim large portions of the Timor Gap for itself. The Complaint states that Portugal previously tried to assert rights to the Timor Gap in the ICJ, but that the ICJ rejected the suit because Indonesia did not submit to its jurisdiction. It then alleges that Oceanic's plan involved an ICJ suit against Australia, and that, shortly after Oceanic presented the plan, Australia announced its withdrawal from the jurisdiction of the ICJ for maritime boundaries. This action was consistent with Australia's repeated practice, as described in the Complaint, of dividing the resources of the Timor Gap by treaties with its neighbors, rather than asserting or relinquishing territorial control of the seabed. We have often said that a party cannot state a claim by pleading legal conclusions. *See, e.g.*, *Ferrer*, 484 F.3d at 780. It takes conclusory pleading to new levels to have proximate causation rest on a politically disruptive, hypothetical lawsuit between nations.

Because Oceanic fails to plead facts plausibly demonstrating that it would have had an opportunity to replace ConocoPhillips in the Timor Gap in the absence

of bribery, we conclude that the causal link is "overly attenuated," *Zervas*, 861 F.2d at 837, and that the alleged violation did not "le[a]d directly to the plaintiff's injuries." *Anza*, 547 U.S. at 461. Accordingly, Oceanic fails to properly plead proximate causation.

III. CONCLUSION

Because Oceanic fails to plead proximate causation, the district court correctly granted the motion for judgment on the pleadings. It is accordingly not necessary for us to consider Oceanic's arguments concerning reassignment on remand or the prior dismissal of claims against certain ConocoPhillips subsidiaries. AFFIRMED.

Footnotes

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

n1 Formally, this entity was known as the "Timor Gap Joint Authority for the Zone of Cooperation."

n2 Formally, the "Timor Sea Designated Authority for the Joint Petroleum Development Area."

n3 2d Amended Compl. ¶ 120.

n4 *Id.*

n5 2d Amended Compl. ¶ 80.

n6 2d Amended Compl. ¶ 84.

n7 2d Amended Compl. ¶ 92.

n8 2d Amended Compl. ¶ 91.

n9 2d Amended Compl. ¶ 84.

n10 2d Amended Compl. ¶ 3. ConocoPhillips counters with other statements by East Timorese leaders in correspondence and media reports, which tend to indicate that, whatever their views toward stepping into Indonesia's shoes in the relationship with Australia, East Timorese officials did not intend to disrupt ConocoPhillips's ongoing operations. These statements, however, lie outside the Complaint and are not relevant to the present analysis.

n11 The East Timorese-Australian Designated Authority is listed as a defendant for all of these claims except the tortious interference claim. Oceanic does not appeal the District Court for the District of Columbia's dismissal of the Designated Authority as a party, or the dismissal of its further claims for unjust enrichment and for violation of the Lanham Act.

n12 Our decision should not be taken as an endorsement of the district court's opinion in its entirety.

n13 Oceanic Br. at 37.

No. H-07-815

UNITES STATES DISTRIC
United States District Court,
S.D. Texas.
OCEANIC EXPLORATION COMPANY, et al.,
Plaintiffs,
v.
CONOCOPHILLIPS, et al., Defendants.
Civil Action No. H-07-815.

April 16, 2008.

COUNSEL FOR PLAINTIFFS: Robert E. Scully, Jr., Vienna, VA, Dale Hugh Oliver, James Joseph Webster, John B. Quinn, Jon D. Corey, Richard A. Schirtzer, Robert J. Becher, Quinn Emanuel et al., Los Angeles, CA, Julie Ann Nayar Searle, Diamond McCarthy LLP, Houston, TX, Kathleen M. Sullivan, Quinn Emanuel et al., Redwood Shores, CA.

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JUDGE: Lynn N. Hughes

OPINION IN DISMISSAL

1. *Introduction.*

One oil company accuses another of bribing foreign governmental officials not to reopen bidding on its mineral concessions. It asserts that it would have bid and won, allowing it to recover a substantial part of the revenue earned by its competitor. The claim fails because it does not plead facts that, if true, would show that its loss was proximately caused by the bribery.

2. *East Timor.*

The island of Timor is about 400 miles northwest of Darwin, Australia. Portugal became its sovereign in the sixteenth century. By the Treaty of Lisbon, the Netherlands acquired the western half of the island in 1859. During the Second World War, the Japanese occupied Timor. In 1945, shortly after Japan surrendered, Indonesia-including West Timor-declared independence from the Netherlands. The Republic of Indonesia was established in 1950, ending the Netherlands' control of West Timor.

In 1974, Portugal began to cede control over East Timor to its population. The next year, East Timor declared its independence. Nine days later Indonesia invaded. For 25 years, Indonesia occupied East Timor. This ended in 1999 when the United Nations mediated an agreement between Indonesia, Portugal, and the United States for a referendum on independence for East Timor. In 2002, after a vote for independence, Portugal and Indonesia recognized the sovereignty of East Timor, and it joined the United Nations.

3. *The Oil.*

In 1972, Australia and Indonesia agreed jointly to exploit the minerals in the seabeds between their countries. Portugal, still in control of East Timor, declined to participate. The boundary between the zones of economic interest of East Timor and Australia remained undefined and became known as the Timor Gap.

In 1974, Portugal awarded Oceanic Exploration Company a concession to explore and produce oil and gas in the Timor Gap. Oceanic had been gathering information on the geology for several years, and it continued to research its potential after the concession. When Indonesia invaded East Timor, Oceanic lost its files on the geology. It says that the Indonesian army took its proprietary data, including maps showing probable large reservoirs of oil and gas.

In 1989, Indonesia and Australia agreed to share the subsea minerals in the Timor Gap. To this end, they created the Joint Authority to manage exploration and production. In 1991, it accepted bids, and ConocoPhillips successfully bid on blocks that were eventually found to have oil and gas. Oceanic chose not to bid.

From 1999 to 2002, East Timor began moving toward a new form of government under a transitional U.N. authority. In October of 2001, Oceanic asked the U.N. to honor the concession by Portugal from 1972 and to expand it to cover the Timor Gap. It refused.

When it became a separate nation, East Timor ratified the Timor Gap treaty between Indonesia and Australia. It also confirmed its contracts with ConocoPhillips,

blocking the new round of bidding sought by Oceanic.

Oceanic says that ConocoPhillips bribed officials of the new government of East Timor to keep the treaty. Simultaneously, it asserts that Australia was threatening East Timor diplomatically to retain the arrangement under the treaty.

4. *Litigation.*

In 2001, Oceanic sued ConocoPhillips in Australia to recover the original concession to it by Portugal. The Australian court dismissed the claim as a non-justiciable. It held that it had no jurisdiction over the validity of the Portugese concession-a predicate for Oceanic's success. Oceanic appealed to the High Court of Australia, but it withdrew the appeal before it was decided.

In March of 2004, Oceanic sued in the District of Columbia, seeking the same thing-a declaration that it properly holds a concession in the Timor Gap. Among the defendants were named twenty-four entities of ConocoPhillips. It also sued the Timor Gap Joint Authority-an entity created by the original Timor Gap Treaty that no longer exists-and the Timor Sea Designated Authority. Next, it included two Indonesian state-owned oil companies-PT Pertaminia, BP MIGAS. Last, in an insanity that has become common, it "named" fifty Doe defendants.

Oceanic's legal theories covered: (a) Racketeer Influenced and Corrupt Organizations Act, (b) Robinson-Patman Act, (c) Lanham Act, (d) misappropriation of trade secrets, (e) interference with

contract, (f) prospective economic damage, (g) conversion, (h) unjust enrichment, and (i) unfair competition. It sought $10.5 billion in damages, trebled under RICO, and punitive damages.

By early 2005, Oceanic had disclaimed that it held a concession from Portugal. Oceanic substituted its assumption that East Timor would have reopened bidding in 2001 if ConocoPhillips had not bribed the ministry. Further, it pleaded that it would have both bid and won.

Ordering Oceanic to replead, the court in Washington said that this was Oceanic's final opportunity to state accurately its cause of action-its factual basis for its theory of liability. It also held that Oceanic had abandoned its claim by contract to rights in the Timor Gap.

In the fall of 2006, the court dismissed Oceanic's twice-amended claims against all defendants except ConocoPhillips and one of its subsidiaries-ConocoPhillips Company. It dismissed the claims against them for unjust enrichment and under the Lanham Act. In February of 2007, the court transferred the case to Houston on ConocoPhillips' motion.

Oceanic's remaining claim is that ConocoPhillips bribed officials of East Timor not to abrogate the concessions from the Joint Authority. By adhering to the concession, it precluded further bidding. If the ministry of East Timor had cancelled the concessions in favor of new bidding, Oceanic says it would have successfully bid and drilled.

5. *Procedural Entanglements.*

Oceanic insists that ConocoPhillips cannot now urge some of the legal defects in Oceanic's motions because it induced Judge Emmet Sullivan to transfer the case to Houston with promises that it would not re-litigate issues. Oceanic has sued the defendants. The case has been transferred here-the whole case, not selected remnants. Every ruling since early 2004 has been interlocutory, and that means that they may be revised until a final judgment is entered. The earlier rulings are rulings of this court.

If ConocoPhillips is raising issues that have been addressed earlier in this case, Oceanic may explain why it should not be heard or, better, why it should not succeed substantively.

A. *Causation.*

Oceanic's claim that the court twice rejected arguments to dismiss on the basis of causation is too broad. The court agreed that Oceanic pleaded sufficiently "but-for" causation. Here, ConocoPhillips moves to dismiss on the grounds Oceanic failed to prove "proximate" causation. But-for causation means only that two events are causally connected-that ConocoPhillips' bribery could be causally connected to Oceanic's inability to bid on mineral resources in the Timor Gap. Proximate causation is a legal test-whether ConocoPhillips' bribery is legally sufficient to result in liability.

ConocoPhillips seeks a ruling on a new issue; it has kept its promise not to re-litigate., if that is what it was. No earlier ruling exists for this court to respect. Further,

even if Judge Sullivan had decided the issue, this court could still rehear it and reach a different conclusion, with humility. *Loumar, Inc., v. Smith*, 698 F.2d 759, 762 (5th Cir.1983).

B. *Discovery.*

Oceanic posits that material facts are in genuine dispute, obliging the court to allow it to rummage through the defendants' files and memories. Oceanic wants to inquire whether (a) it would have qualified to bid for concessions from the free East Timor, and (b) its bids would have won.

The rules anticipate confusion between motions for judgment on the pleadings and for summary judgment. If resolution of the motion requires the court to consider facts other than those properly pleaded, then the motion is for a summary judgment. In neither case does the court find facts that are adjudicative-essential to recovery.

Although ConocoPhillips disagrees with Oceanic's facts, its motion does not request a resolution of them. It seeks judgment because Oceanic has pleaded facts that do not show a direct casual connection between ConocoPhillips' acts and Oceanic's injury. Specifically, ConocoPhillips argues that, assuming its bribery, the injury to Oceanic is not cogently consequent.

If ConocoPhillips were moving for summary judgment, the facts Oceanic wants to know before addressing its motion are not material. It wants to discover what qualifications East Timor would have imposed on bidders if it had had a new auction. The only evidence of

that non-fact would be the qualifications the nation has had for bidders in parallel auctions since independence. That includes a nearly insuperable requirement that Oceanic establish the administrative, geologic, and economic similarity between auctions.

The fact of its ability to have won the bid has two components. Oceanic would need to ascertain the unknowable evaluation that would have been made by other companies in arriving at their bids. Oceanic would need to "discover" what bid it would have made if it had been allowed to participate. This seems to be something that Oceanic would know.

C. Motions Striking Motions.

Oceanic moves to strike ConocoPhillips' motion on the pleadings-it does not want ConocoPhillips re-litigating issues or disguising its motion for summary judgment. The basis for Oceanic's motion to strike in either case is wrong. The rules allows the court to strike "from a pleading" an insufficient defense or redundant, immaterial, impertinent, or scandalous matters. Oceanic moved to strike the whole pleading. The motion to strike will be denied.

6. *Causation.*

ConocoPhillips seeks judgment on the pleadings, arguing that Oceanic has pleaded facts that cannot show that it was proximately harmed by the bribery of officials in East Timor after independence. It suggests that the complaint's data do not describe a direct injury-that it is speculative to link ConocoPhillips' bribery with Oceanic's assumed injury.

Oceanic pleads that ConocoPhillips bribed the first ministry of East Timor, causing the government to adhere to its antecedent's treaty arrangements. It also pleads that the government of Australia was pressuring the new country not to disturb its settled economic arrangements for the development of the Timor Gap.

Oceanic argues that it was cheated of an opportunity to bid; but that opportunity would only have existed if East Timor had repudiated the commitments of its predecessors in sovereignty. Oceanic has no entitlement in a new nation's choice of political and economic relations-none. Oceanic does not have an auction that was corrupted by ConocoPhillips. It has policy decisions by a nation about its present and future contracts with a company that had invested in its future. Oceanic acts as if it had a *right* to a new auction.

With some irony, Oceanic says that ConocoPhillips violated its rights by convincing East Timor to maintain their business relationship; yet it insists that it was permissible for it to try to convince East Timor to breach its agreements with ConocoPhillips. Oceanic's premise is that it had a right to an abrogation.

Oceanic's facts must be that if ConocoPhillips had not bribed East Timor: (a) East Timor would have chosen to abrogate the concessions, (b) Australia would have acquiesced, (c) East Timor would have reopened bidding, (d) Oceanic would have been permitted to bid, (e) Oceanic would have won the bid, and (f) Oceanic would have correctly developed the concession so that it was profitable.

Proximate cause is an analytical tool used by the law to

define a party's responsibility for the consequences of its acts to those (a) injuries that could have reasonably been anticipated and (b) losses that can be reasonably ascertained. *Holmes v. SIPC*, 503 U.S. 258, 268, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992). It reconciles justice, reason, and practicality.

The less direct an injury, the more difficult it is to ascertain both causation and damages. In a case involving illegal market sharing among building contractors, a carpenters' union sued for their injury from the anti-competitive actions. The union asserted a causal connection between an antitrust violation and harm to the union. It also pleaded that the contractors intended to harm it. These were not enough to satisfy the requirement for legal causation-proximate cause. The sequence of events from the collusion to the union's injury was complicated and imprecise. Without the clarity that is likely to come from immediacy, the injuries to the union could not rationally be said to flow from the acts of the contractors. The union had no standing at law. *Associated General Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 540, 103 S.Ct. 897, 74 L.Ed.2d 723 (1983).

Oceanic says that ConocoPhillips intended to injure it, and that there is a causal connection between the bribes and its damage. This is not enough. The damage must be traceable directly to the bribes, with a minimum of intervening events or alternative plausible causes.

Oceanic's asserts abstract operative facts-bribery, hostility, causation, and damage. It supports the abstractions with over 50 pages of trivia The details are not cogent; we are left with a metaphysical leap from

this list of gossip and debris of ConocoPhillips' working in the region to Oceanic's particular interpretation of why it lost in Timor. For instance, Oceanic pleads that the president of ConocoPhillips flew to East Timor to hand an official a suitcase of cash. Implausibility aside, Oceanic simply can not link this fact with its injury. That is, it can not possibly have an idea why the president of an international corporation would personally deliver cash in a briefcase to an official of East Timor. It has assumptions-nothing more.

Simply put, Oceanic complains that ConocoPhillips paid bribes to preserve its existing, legitimate investment from arbitrary cancellation, while Oceanic lobbied East Timor to expropriate ConocoPhillips' concession for its benefit.

7. *The Links.*

A. *East Timor Abrogates.*

After Oceanic shows that ConocoPhillips bribed officials of East Timor expressly to keep the concessions, it must show that, absent the bribes, East Timor would have unilaterally abrogated concession from Australia and Indonesia. To attribute a decision by a government at a high level to single person is fanciful. To reconstruct a collective decision-making process in the absence of a single input-bribes-and predict what would have happened otherwise is on the impossible edge of difficult.

Oceanic insists that it can know what decisions would have been made by leaders-whom it says are corrupt-in a small, newly-independent nation of the South East

Pacific that had just emerged after years of war and occupation. It could only guess, and its prediction would be speculative. Governmental decisions are complex and constrained. *See generally* Theodore C. Sorensen, *Decision-Making in the White House: The Olive Branch or the Arrows* (Columbia University Press 1963).

B. *Australia Acquiesces.*

ConocoPhillips' concessions were granted by a joint authority created by Indonesia and Australia. They worked together to avoid conflict over their disputed maritime boundary and over ownership of the subsea minerals. No concessions had ever been granted directly by East Timor.

It is debatable whether East Timor could have abrogated the concessions. The concessions were within the disputed maritime territory. In 2002, Australia withdrew from the jurisdiction of the International Court of Justice for all disputes on maritime boundaries; therefore, no international organization could have decided the matter. Australia had as much interest in the efficient development of the area as East Timor, and it was unlikely to permit East Timor to disrupt the arrangements and its revenue from the current concessions voluntarily. East Timor was not economically, diplomatically, or militarily in a position to force the issue. Oceanic has asserted that Australia was pressuring East Timor, a concession that ConocoPhillips was not the only factor in the decision.

The present and future concessions in the Timor Gap depend in large part on Australia. Oceanic can only speculate what might have happened if East Timor had

tried to have an independent policy on the Timor Gap.

Parenthetically, because Indonesia incorporates West Timor, that nation has an interest in the actions of other nations and their claims to the adjoining seabed. East Timor, then, would have founds itself with two much larger neighbors affected by the consequence of a renunciation of ConocoPhillips' concession.

C. *East Timor Auctions.*

If East Timor had abrogated the concession and if Australia had acquiesced, Oceanic cannot know what East Timor would have likely done; yet it says East Timor would have reopened bidding.

East Timor might have abrogated the concession only to renegotiate with the companies with existing operations. It might have granted the development to the company of its choice without notice or bids.

Investors avoid countries-and other businesses-that do not honor their contracts. When countries foul the rules, both domestic and foreign investment shrinks. East Timor knows that.

D. *Oceanic Qualifies.*

Oceanic says that if East Timor had allowed bidding, it would have won. Oceanic cannot show that. In 2001 and 2002-the years of the missing auction-Oceanic did no exploration or development. (Oceanic Form 10-KSB for 2002 (filed Mar. 26, 2003) at 3)). Its principal business was being an employment agency in San Diego. It had eight employees with total assets of $3.7 million. It says

that it has affiliates that would have supplied it with financial strength.

East Timor may well not have allowed a company like Oceanic to bid because reviewing bids and evaluating companies is an important, expensive task for it. A successful bid that cannot be used responsibly causes a country to re-offer the concession, and in the meantime, competent bidders may have bought prospects from other offering countries. Oceanic can only speculate that it would have been allowed to bid.

E. *Oceanic Wins.*

Oceanic needs to be able to prove that it would have won an auction that was not held against competitors whom it does not know. Assuming that it could rely on the kindness of strangers for the money, its geology was taken in the Indonesian occupation in 1974, as it says. Although Oceanic's fieldwork may have been profoundly insightful, other competitors have newer fieldwork and well data.

Oceanic does not have its own bid to show what it would have done; it made no unsolicited offer to East Timor, but it did request a new auction. Since 1991, Oceanic has not told East Timor, Australia, or Indonesia its plan for bid price, source of financing, or other parts of what it must have done to win. Neither Oceanic nor its competitors can know what they would have bid.

F. *Oceanic Develops Profitably.*

Oceanic calculates its damages based on what

ConocoPhillips has accomplished in the Timor Gap. If it had won the auction in 2001, Oceanic would have had to develop the fields discovered by ConocoPhillips as successfully as it has done. It is unlikely that it could have done better than ConocoPhillips. Without ConocoPhillips' geology, capital, geologists, engineers, sources of supply, and the rest of its enterprises, Oceanic cannot rationally compare its prospects with the historic achievement of ConocoPhillips.

Theoretically, Oceanic could have won the auction and then sold its concession to ConocoPhillips or another company, taking an override. Of course, East Timor is at least as sophisticated as Oceanic, and it could have limited the winning bidders rights of alienation. Oceanic does not know.

8. *Conclusion.*

Oceanic speculates that absent the bribery:

- East Timor would have chosen to abrogate the concessions.
- Australia would have acquiesced.
- East Timor would have reopened bidding.
- Oceanic would have been permitted to bid.
- Oceanic would have won the bid.
- Oceanic would have profitably developed the concession.

To recover, Oceanic must show what would have happened absent the bribe to a high degree of probability. It can not. Assuming ConocoPhillips bribed officials of East Timor not to reopen bidding, the decision was made not by any one official but by an entity representing all of East Timor. This court will not imagine the decision-making process of East Timor, Australia, Indonesia, Oceanic, and dozens of oil companies.

In Oceanic's long complaint-twice amended, not counting its practice run in the Australian courts-it has not pleaded facts that, if true, show its injury is connected to the acts it describes. If ConocoPhillips acted corruptly in East Timor, Oceanic was injured in common with oil companies, consumers, and the rule of law everywhere.

Assuming its facts-as opposed to assumptions and contentions, legal theories, and demands-to be true, Oceanic Exploration Company's pleadings do not show that the wrongful acts of ConocoPhillips and ConocoPhillips Company proximately caused the harm it claims.

Oceanic may well have been the victim of international politics in 1974 when it lost its Portugese concession to the Indonesian invasion. It cannot recover for its losses to political risk 30 years ago-not from Indonesia, not from ConocoPhillips.

Oceanic Exploration Company and Petrotimor Companhia de Petroleos, S.A.R.L. will take nothing from ConocoPhillips and ConocoPhillips Company.

No.08-20338

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCEANIC EXPLORATION COMPANY, A DELAWARE CORPORATION; PETROTIMOR COMPANHIA DE PETROLEOS, SARL, A CORPORATION ORGANIZED UNDER THE LAWS OF PORTUGAL,
Plaintiffs-Appellants

v.

PHILLIPS PETROLEUM COMPANY ZOC, A DELAWARE CORPORATION; PHILLIPS PETROLEUM COMPANY INDONESIA, A DELAWARE CORPORATION; PHILLIPS PETROLEUM (96-20) INC., A DELAWARE CORPORATION; PHILLIPS PETROLEUM PRODUCTION INDONESIA INC., A DELAWARE CORPORATION; PHILLIPS INDONESIA INC., A DELAWARE CORPORATION; PHILLIPS INTERNATIONAL INVESTMENT INC., A DELAWARE CORPORATION; CONOCOPHILLIPS AUSTRALIA PTY LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS AUSTRALIA GAS HOLDINGS PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS JPDA PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED

UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS PIPELINE AUSTRALIA PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS STL PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS WA-248 PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-12) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-13) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-16) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-19) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-20) PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS (03-21) PTY. LTD., AN

AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; CONOCOPHILLIPS CO., A DELAWARE CORPORATION; CONOCOPHILLIPS, A DELAWARE CORPORATION; DARWIN LNG PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; PHILLIPS PETROLEUM CO., ZOC PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA; TOKYO TIMOR SEA, PTY. LTD., AN AUSTRALIAN PRIVATE COMPANY ORGANIZED UNDER THE LAWS OF THE COMMONWEALTH OF AUSTRALIA,

Defendants-Appellees.

November __, 2009

JUDGES: Before Circuit Judges BARKSDALE, DENNIS, and ELROD.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5th CIR. R 35) the Petition for Rehearing En Banc is also DENIED.

United States District Court,
District of Columbia.
OCEANIC EXPLORATION CO., et al., Plaintiffs,
v.
CONOCOPHILLIPS, INC., et al., Defendants.
Civil Action No. 04-332 (EGS).

Sept. 21, 2006.

Robert E. Scully, Jr., Rees, Broome & Diaz, P.C., Vienna, VA, Jon David Corey, Dale Hugh Oliver, Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP, Los Angeles, CA, Kathleen M. Sullivan, Quinn, Emanuel, Urquhart, Oliver & Hedges, Redwood Shores, CA, for Plaintiffs.

Brant Warren Bishop, Christopher Landau, Michael D. Jones, Thomas D. Yannucci, Kirkland & Ellis LLP, Washington, DC, Martin D. Beirne, David A. Pluchinsky, Jeffery T. Nobles, William Bruce Stanfill, Beirne, Maynard & Parsons, LLP, Houston, TX, for Defendants.

MEMORANDUM OPINION

EMMET G. SULLIVAN, District Judge.

Pending before the Court are defendant Timor Sea Designated Authority's ("TSDA") Motion to Dismiss the Second Amended Complaint and defendants ConocoPhillips' Motion to Dismiss the Second Amended Complaint. Upon careful consideration of the motions, the responses and replies thereto, and for the following reasons, the Court **GRANTS** TSDA's Motion to Dismiss and **GRANTS in part** and **DENIES in part**

ConocoPhillips' Motion to Dismiss.

I. FACTUAL BACKGROUND[1]

Plaintiffs Oceanic Exploration Company and Petrotimor Companhia de Petroleos, S.A.R.L. (collectively "Oceanic") commenced this action to recover damages for the loss of opportunity to compete or bid for rights to explore for and produce oil and natural gas from the seabed between East Timor and Australia. The seabed between East Timor and Australia is known as the Timor Gap.

In 1974, Portugal, then sovereign of East Timor, awarded plaintiffs a concession to explore for and produce oil and natural gas in the Timor Gap.[2] In 1975, Indonesia invaded East Timor, and established East Timor as the 27th province of Indonesia. On December 11, 1989, Indonesia and Australia agreed to exploit the oil and natural gas in the Timor Gap by establishing a "Zone of Cooperation" and signed the Timor Gap Treaty, effective February 9, 1991. The Timor Gap Treaty negated the validity of all previous unilateral concessions in the Timor Gap, including the Portuguese colonial concession of 1974 and concessions granted by Australia prior to signing of the Treaty.

The Timor Gap Treaty also created the Joint Authority, which had the exclusive authority to grant concessions for the development of natural resources in the Timor Gap, with royalties to be divided equally between Australia and Indonesia. The Joint Authority awarded concessions pursuant to a competitive bidding process between June to October 1991. Defendants ConocoPhillips[3] became one of the recipients of

concessions at the conclusion of the bidding process. ConocoPhillips eventually uncovered substantial oil and natural gas reserves in the Timor Gap in an area overlapping the area covered by plaintiffs' colonial concession from Portugal.[4]

Plaintiffs abstained from the 1991 bidding process because they believed that they already had legitimate rights to explore for oil and natural gas in the Timor Gap from Portugal. Rather than calling into question the concession conferred by Portugal in 1974, the plaintiff chose not to participate in the 1991 bidding process.[5]

On August 30, 1999, the East Timorese people voted for independence, and on May 20, 2002, East Timor formally celebrated its independence. The new East Timorese Constitution asserted sovereignty over its natural resources, and specifically nullified any previous concessions not ratified by the new independent government. Pursuant to these provisions of the new constitution, the governments of East Timor and Australia signed the Timor Sea Treaty to govern natural resource exploitation in the Timor Gap.

Like the Timor Gap Treaty signed by Indonesia and Australia in 1991, the Timor Sea Treaty between East Timor and Australia established the Timor Sea Designated Authority ("TSDA") to oversee the granting of exploration and development concessions in an area designated as the "Joint Petroleum Development Area" ("JPDA") in the Timor Gap. The Timor Sea Treaty also provided immediate concessions to certain corporations holding existing contracts, including ConocoPhillips. The value of the oil and

natural gas reserves in the disputed concession areas allegedly exceed $50 billion.

Plaintiffs filed this suit seeking damages for the "theft" of their oil and natural gas rights in the Timor Gap. Plaintiffs allege that ConocoPhillips funneled illegal payments to Indonesian government officials leading up to the 1991 bidding process in order to secure influence in the region and eliminate competitors. Plaintiffs further allege that when East Timor gained independence and established its government, ConocoPhillips bribed East Timorese government officials to ensure that they recognized ConocoPhillips' concession rights, but not plaintiffs' rights, in the Timor Gap.

In their complaint, plaintiffs accuse ConocoPhillips of violating and conspiring to violate the Racketeer and Corrupt Organization Act ("RICO")(Count I and II); violating the Robinson-Patman Act (Count III) and the Lanham Act (Count IV); intentionally interfering with prospective economic advantage (Count V); unjust enrichment (Count VI); and unfair competition (Count VII). All of these counts, but for Count III, are also alleged against defendant TSDA. Plaintiffs seek damages of at least $10.5 billion.

II. STANDARD OF REVIEW

The defendants' respective motions to dismiss are brought pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, 12(b)(2) for lack of personal jurisdiction, and 12(b)(6) for failure to state a claim. *See* Fed.R.Civ.P. 12(b)(1), (2), (6).

The Court will not grant a motion to dismiss for failure to state a claim under Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1276 (D.C.Cir.1994). Accordingly, at this stage of the proceedings, the Court accepts as true all of the complaint's factual allegations. *See Doe v. United States Dep't of Justice*, 753 F.2d 1092, 1102 (D.C.Cir.1985). Plaintiffs are entitled to "the benefit of all inferences that can be derived from the facts alleged." *Kowal*, 16 F.3d at 1276.

A motion under Rule 12(b)(1) presents a threshold challenge to the Court's jurisdiction. *Haase v. Sessions*, 835 F.2d 902, 906 (D.C.Cir.1987). *See also* 4 Wright & Miller, Fed. Prac. & Proc. § 1350 (2002 Supplement)("subject matter jurisdiction deals with the power of the court to hear the plaintiff's claims in the first place"). A court may resolve a Rule 12(b)(1) motion based solely on the complaint, or if necessary, may look beyond the allegations of the complaint to affidavits and other extrinsic information to determine the existence of jurisdiction. *Haase*, 835 F.2d at 908. *See also Herbert v. Nat'l Acad. of Sci.*, 974 F.2d 192, 197 (D.C.Cir.1992). The standard of review is virtually identical to that used for 12(b)(6) motions, however, the plaintiff bears the burden of proving jurisdiction. *See Vanover v. Hantman*, 77 F.Supp.2d 91, 98 (D.D.C.1999).

When personal jurisdiction is challenged pursuant to Rule 12(b)(2), the plaintiff has the burden of establishing a *prima facie* case that personal jurisdiction exists. *See Second Amend. Foundation v.*

U.S. Conference of Mayors, 274 F.3d 521, 524 (D.C.Cir.2001). A *prima facie* case in this context means that the plaintiff must present evidence sufficient to defeat a motion for judgment as a matter of law. *See Carter v. Duncan-Huggins, Ltd .*, 727 F.2d 1225, 1227 (D.C.Cir.1984)(such motions should be denied unless "the evidence, together with all inferences that can reasonably be drawn therefrom, is so one-sided that reasonable men could not disagree on the verdict").

To determine if a basis for personal jurisdiction exists, the Court should resolve factual discrepancies in the complaint and affidavits in favor of the plaintiff. *Crane v. New York Zoological Society*, 894 F.2d. 454, 456 (D.C. Cir1990). When reviewing a challenge pursuant to Rule 12(b)(1) or 12(b)(2), the Court may consider documents outside the pleadings to assure itself that it has jurisdiction. *AGS International Services v. Newmont USA Limited*, 346 F.Supp.2d 64, 73-74 (D.D.C.2004).

III. DEFENDANT TSDA'S MOTION TO DISMISS

TSDA is the unincorporated entity responsible for the day-to-day regulation and management of petroleum activities in the JPDA, including the granting of concessions. [6] TSDA was created in April 2003, pursuant to Article 6 of the Timor Sea Treaty. [7]

A. The Court has subject matter jurisdiction under 28 U.S.C. § 1605(a)(2).

As a threshold matter, the Court must determine whether it has subject matter jurisdiction over the TSDA. The TSDA posits that it is immune from the

claims against it under the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1602-11, because it is an agency of foreign governments. Further, it contends that because it deals in natural resources, its activities are not commercial in nature. Rather, its grant of concession rights in the form of production sharing contracts, is more akin to a grant of a license because the TSDA does not actually have the physical capabilities to exploit and market the petroleum itself.

The FSIA, passed by Congress in 1976, clarified the legal standards governing claims of immunity in civil actions against a foreign state or its political subdivision, agencies or instrumentalities. *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 488 (1983). A foreign state is generally immune from the jurisdiction of federal courts, subject to a set of exceptions as specified in 28 U.S.C. §§ 1605 and 1607. *Id.* When one of these exceptions applies, "the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances." *Id.* at 489 (quoting 28 U.S.C. § 1606). In other words, if foreign governments and their agents engage in commercial activities like a private party, they then cannot claim sovereign immunity against claims arising out of those activities.

Plaintiffs contend that the Court has jurisdiction pursuant to an exception found in 28 U.S.C. § 1605(a)(2), which provides:

> A foreign state shall not be immune from the jurisdiction of the United States or of the States in any case ... (2)in which the action is

> based ... upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States. (Emphasis added).

According to the plaintiffs, even if the TSDA is an agency of a foreign government, the TSDA cannot claim immunity under the FSIA because it acted "in connection with a commercial activity," and its conduct has a "direct effect" in the United States when it entered into production sharing contracts with private companies and engaged in production and marketing of oil and natural gas. *See Id.*

"Commercial activity" is defined in the FSIA as "either a regular course of commercial conduct or a particular commercial transaction or act." 28 U.S.C. § 1603(d). "The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." *Id.* The conduct need not be entirely commercial to fall under the exception, however. *See Adler v. Fed. Republic of Nigeria*, 107 F.3d 720, 725 (9th Cir.1997) ("[t]he FSIA does not require that every act by the foreign state be commercial for the third clause of the commercial activity exception to apply.") As long as an act causes a direct effect in the United States, it need only be "in connection with a commercial activity." 28 U.S.C. § 1605(a)(2). Further, "the effect of the act need not be substantial or even foreseeable, so long as it is more than purely trivial and it follows as an immediate consequence of the defendant's activity." *Hugo Princz v. Fed. Republic of Germany*, 26 F.3d 1166, 1172

(D.C.Cir.1994).

Turning to whether the TSDA is immune from plaintiffs' claims pursuant to the FSIA, the Court concludes that it is not. First, under 28 U.S.C. § 1605(a)(2), the claims against TSDA are based upon the acts of TSDA "in connection with a commercial activity." The TSDA has been vested with the authority to award production sharing contracts to private companies. [8] These contracts lay out the terms of a joint commercial venture between the TSDA and the private companies to produce and market petroleum and natural gas from the Timor Gap.

For example, in 2002, the TSDA and Conocophillips entered into production sharing contracts.[9] Pursuant to these contracts, ConocoPhillips extracts both its portion and the TSDA's portion of oil and natural gas from the Timor Gap. ConocoPhillips submits annual work programs and budgets for TSDA's approval; recovers its operating costs; and divides the profits with the TSDA, but with the TSDA capturing an increasing percentage of the profits. Further, under the contracts, the TSDA reserves the right to market petroleum covered by the production sharing contract itself, although it has yet to exercise its right.[10]

Moreover, the fact that the contracts involve natural resources do not affect the commercial nature of the contracts. *See* H.R.Rep. No. 94-1487 at 16 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604, 6615-16 (in enacting FSIA, Congress specifically identified a "mineral extraction company" as a commercial activity"). What is of import is that the TSDA has the authority to market the petroleum, if and when it

chooses to do so. In short, the Court is persuaded that when the TSDA entered into production sharing contracts with ConocoPhillips to engage in production and marketing of oil and natural gas, it acted "in connection with a commercial activity," satisfying the first prong of the § 1605(a)(2) exception.

Turning to the second prong of the exception, "direct effect in the United States," plaintiffs assert that shipping and selling petroleum from Timor Gap in the United States for TSDA's commercial profit and depositing the proceeds of these sales to the TSDA's bank accounts in the United States constitute "direct effect in the United States." The Court finds that either one of these actions satisfies the "direct effect" requirement because the effect "follows as an immediate consequence of the [TSDA's] activity." *Princz*, 26 F.3d at 1172. Accordingly, this Court has subject matter jurisdiction, pursuant to 28 U.S.C. § 1605(a)(2).[11]

B. The act of state doctrine bars the Court from adjudicating plaintiffs' claims against defendant TSDA.

The TSDA argues that the act of state doctrine bars the Court from adjudicating any of the plaintiffs' claims and thus, the action should be dismissed in its entirety. The Court agrees.

The act of state doctrine "precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 401 (1964); *see also Underhill*

v. Hernandez, 168 U.S. 250, 252 (1887) ("[e]very sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory."). The doctrine has evolved as a "consequence of domestic separation of powers," and reflects the "strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder the conduct of foreign affairs." *W.S. Kirkpatrick & Co., Inc. v. Environmental Tectonics Corp.*, 493 U.S. 400, 404 (1990).

The act of state doctrine is not jurisdictional (like the political question doctrine), but rather is "*a principle of decision* binding on state and federal courts alike." *W.S. Kirkpatrick*, 493 U.S. at 406 (emphasis in original). This simply requires reviewing courts to "deem valid" the acts of foreign sovereigns taken within their own jurisdictions. *Id.* at 409. In every case in which the Supreme Court has held the act of state doctrine applicable, "the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory." *Id.* at 405. The party moving for the doctrine's application has the burden of proving that dismissal is an appropriate response to the circumstances presented in the case. *See Alfred Dunhill of London, Inc. v. Cuba*, 425 U.S. 682, 694 (1976).

Plaintiffs' theory of recovery against the TSDA is based upon its alleged "loss of opportunity in the post-independence period of East Timor to compete or bid for rights to explore for and produce oil and natural gas

from the seabed between East Timor and Australia ."[12] In order for plaintiffs to get the relief they seek, they must first have a legally cognizable right to "compete or bid for rights" in the areas about which they are complaining.

Annex F of the Timor Sea Treaty entered into by East Timor and Australia states,

> Contracts shall be offered to those corporations holding, immediately before entry into force of the Treaty, contracts numbered 91-12, 91-13, 95-17, and 96-20 in the same terms as those contracts, modified to take into account the administrative structure under this Treaty, or as otherwise agreed by East Timor and Australia.[13]

Annex F of the Timor Sea Treaty is an official act of both East Timor and Australia. Through Annex F, East Timor and Australia made a sovereign decision to confirm, rather than disavow, the concessions that were awarded through the competitive bidding process in 1991. By signing and ratifying this bilateral international treaty, East Timor and Australia confirmed their joint decision to allow companies, who had made substantial investments since 1991 in the Timor Gap, to continue exploring and developing the oil and natural gas reserves. In 2002, when the Treaty came into effect, no provisions were made for bidding or further opportunities to compete for concession rights in the Timor Gap. Therefore, plaintiffs nor any one else had a right to "compete or bid for rights" in the Timor Gap at that time.

Plaintiffs argue, however, that Annex F was drafted and approved as a result of ConocoPhillips' bribery of East Timorese officials, and that the act of state doctrine does not bar claims for damages resulting from such unlawful conduct. Plaintiffs claim that they are not challenging the right of East Timor and Australia to enter into a treaty, rather they are challenging the corrupt activities of ConocoPhillips and the TSDA.

Plaintiffs rely on *W.S. Kirkpatrick Co. v. Environmental Tectonics Corp., International*, 493 U.S. 400 (1990). In *W.S. Kirkpatrick*, the losing bidder for a Nigerian military procurement contract brought RICO and Robinson-Patman Act claims based on its competitor's alleged bribery of Nigerian officials. Although the *W .S. Kirkpatrick* Court found that judicial resolution of plaintiff's case required imputing an "unlawful motivation" to foreign officials, the Court did not apply the act of state doctrine because plaintiff's cause of action did not technically "turn on" the validity of a sovereign act. *See W.S. Kirkpatrick*, 493 U.S. at 406 ("[r]egardless of what the court's factual findings may suggest as to the legality of the Nigerian contract, its legality is simply not a question to be decided in the present suit."). Further, the Court noted that the plaintiff was not "trying to undo or disregard" an act of the government, "but only to obtain damages from private parties who had procured it." *Id.* at 407.

Although *W.S. Kirkpatrick* deals with allegations of how a competitor bribed a foreign government official in order to procure a contract like the case before this Court, *W.S. Kirkpatrick* is distinguishable from the facts of this case in three important ways. One, *W.S. Kirkpatrick* involved a private lawsuit between two

competing bidders. Unlike the defendant in W.S. *Kirkpatrick*, the TSDA is not a competitor who bribed a foreign government office to obtain a commercial contract. The TSDA can hardly be plaintiffs' competitor because it is not a "commercial entity." Rather, the TSDA is a regulatory body created by the sovereign governments of Australia and East Timor, pursuant to the Timor Sea Treaty.

Article 6 of the Timor Sea Treaty creates a three-tiered joint administrative structure to regulate the activities in the Timor Gap: the Designated Authority, the Joint Commission and the Ministerial Council.[14] Article 6(b)(iv) further provides that the TSDA "shall be responsible to the Joint Commission and shall carry out the day-to-day regulation and management of petroleum activities."[15] A more detailed function of the TSDA is set out in Annex C of the Treaty.[16] The TSDA's duties include: "day-to-day management and regulation of petroleum activities"; "preparation of annual reports" to the Joint Commission; "requesting assistance with pollution prevention measures" from appropriate Australian and East Timorese authorities; establishing safety and restricted zones consistent with international law; "controlling movements into, within and out of" Timor Gap; and "issuing regulations and giving directions under the Treaty on all matters related to the supervision and control of petroleum activities."[17] *See also* Risa Decl. ¶ 16. ("[t]he TSDA acts as a regulating authority on behalf of the sovereign states that concluded the Timor Sea Treaty, Australia and Timor-Leste. It is not a commercial entity."). In short, unlike the defendant in *Kirkpatrick*, the TSDA is not a purely commercial enterprise that competes with the plaintiffs, rather it functions much like a regulatory

agency.

Another reason why this case is distinguishable from *W.S. Kirkpatrick* is that this case does turn on the validity of an official act. Unlike the plaintiff in *W.S. Kirkpatrick*, the plaintiffs in this case are asking the Court to invalidate an official act of two foreign sovereigns. *See Kirkpatrick*, 493 U.S. at 406. In order for the Court to recognize that plaintiffs had a "right to compete or bid" in the post-independence period of East Timor, the Court must find the official acts of the TSDA in awarding contracts to those companies that had won concession rights back in 1991 as invalid, which in turn, means finding Annex F, which authorized such renewals, as invalid. The TSDA, as a regulatory governmental agency, was merely following the directives of two sovereign nations as articulated in the Timor Sea Treaty. In sum, the Court is barred by the act of state doctrine to pass judgment on the official sovereign acts of Australia and East Timor that resulted in the drafting, signing and ratification the Timor Sea Treaty, including Annex F.[18]

The final important difference between this case and *W.S. Kirkpatrick* is that this case concerns the granting of rights to exploit natural resources, whereas *Kirkpatrick* was based on the award of a procurement contract. The decisions relating to the development of natural resources are quintessentially sovereign prerogatives. *See World Wide Minerals, Ltd. v. Republic of Kazakhstan*, 296 F.3d 1154, 1165 (D.C.Cir.2002) ("We have no doubt that issuance of a license permitting the removal of uranium from Kazakhstan is a sovereign act .... [t]he right to regulate imports and exports is a sovereign prerogative.").

Thus, *W.S. Kirkpatrick* is inapplicable to this case and the Court must abide by the act of state doctrine. This Court is precluded from instructing the governments of both East Timor and Australia that they should disrupt a decade of economic investment and development in their own valuable natural resources, and instead afford companies, like plaintiffs Oceanic, an opportunity to compete or bid for concession rights. Accordingly, the act of state doctrine bars this Court from adjudicating any of plaintiffs' claims against the TSDA.

C. Applicability of the "corruption exception" to the act of state doctrine.

Plaintiffs argue that even if the act of state doctrine is applicable, the corruption exceptions apply, therefore, the conduct of the TSDA is still subject to this Court's scrutiny. The TSDA responds that plaintiffs are relying on *dicta* for their argument that an exception be made when the act of the foreign state was procured by bribery, coercion or fraud.

Plaintiffs rely on a Southern District of New York case *Dominicus Americana Bhoio v. Gulf & W. Indus., Inc.*, 473 F.Supp. 680, 690 (S.D.N.Y.1979) for the proposition that the act of state doctrine is not applicable when the government act is perpetuated by fraud and coercion.[19] *Dominicus Americana Bhoio* cites to a Second Circuit opinion in *Hunt v. Mobil Oil Corp.*, 550 F.2d 68 (2d Cir.1977) as authority for its purported "corruption exception," however, *Hunt* does not address the existence or the applicability of such an exception under the act of state doctrine. Therefore, because *Hunt* does not support plaintiffs' broad assertion of such an exception, plaintiffs' reliance on *Dominicus*

Americana Bhoio is misplaced.

In *Hunt*, the plaintiff was a independent producer of oil who had obtained an oil concession from Libya. *Hunt*, 550 F.2d at 70. The defendants were seven major oil producers producing oil both in Libya and the Persian Gulf fields. *Id.* The plaintiff alleged that the conspiratory actions of the defendants manipulated and persuaded Libya to eliminate plaintiff as a producer of Libyan crude oil. *Id.* at 72. The *Hunt* defendants asserted the act of state doctrine defense that it was Libya, a sovereign nation, which ultimately decided to cut back plaintiff's production and eventually nationalize its interests. *Id.* at 72-74. In response, the plaintiff pointed out how it was not complaining about what Libya did, but what the defendants did in order to catalyze Libya's decision to nationalize its oil production. *Id.* at 76. The plaintiff maintained that it was not claiming "that Libya acted illegally, simply that as a matter of fact its 'lawful' act was induced by the unlawful conduct of the named defendants." *Id*.

The *Hunt* Court concluded that although it is not called upon to sit in judgment upon the acts of Libya, it is nonetheless asked to make "an inquiry into the subtle and delicate issue of the foreign policy of a foreign sovereign." *Id.* at 77. The *Hunt* Court recognized that it cannot logically separate Libya's motivation from the validity of its seizure. *Id.* When Libya acted to nationalize its oil production, that act was a lawful sovereign act. *Id.* at 76-77. As such, the *Hunt* Court was foreclosed from adjudicating what motivated the Libyan government to take such an act. *Id.* Further, the *Hunt* Court noted that this case was not the "proper vehicle for consideration of international

commercial bribery in so far as it affects the act of state doctrine" because no allegations had been made that Libyan officials were bribed. *Id.* at 90.

Turning to whether the corruption exception to the act of state doctrine is mere *dicta* and if not, whether it is applicable to this case, the Court concludes that it need not decide that issue at this time. The situation presented in this case is analogous to *Hunt*, and much like the Court in *Hunt*, this Court cannot logically separate East Timor's motivation to award contracts to those companies that had won concession rights back in 1991 from the validity of its sovereign conduct to draft and approve Annex F of the Timor Sea Treaty which authorized such renewals. Accordingly, plaintiff's reliance on *Dominicus Americana Bhoio* is unpersuasive because that case is inapposite and the act of state doctrine remained applicable to plaintiffs' claims against the TSDA.

D. Applicability of the "commercial exception" to the act of state doctrine.

Plaintiffs' argument that the act of state doctrine is not applicable to shield commercial conduct must fall as well. Plaintiffs incorrectly assert that the act of state doctrine would not bar suits once the FSIA's commercial activity exception has been satisfied.

Even when a court has jurisdiction over a foreign sovereign under the commercial activity exception to the FSIA, the act of state doctrine may apply. *Virtual Defense and Development International, Inc. v. Republic of Moldova*, 133 F.Supp.2d 1, 7 (D.D.C.1999). *See also International Ass'n of Machinists and*

Aerospace Workers v. Organization of Petroleum Exporting Countries, 649 F.2d 1354, 1360 (9th Cir.1981) ("[t]he act of the state doctrine is not diluted by the commercial activity.... While purely commercial activity may not rise to the level of an act of state, certain seemingly commercial activity will trigger act of state considerations.").

The Supreme Court requires a balancing approach when commercial conduct is involved and the act of state doctrine is alleged. *Banco Nacionale de Cuba v. Sabbatino*, 376 U.S. 398, 428 (1964). "It is necessary to balance a judiciary's interest in hearing a case involving a commercial activity with its desire to avoid matters of foreign affairs controlled by the executive or legislative branches." *Virtual Defense*, 133 F.Supp.2d at 8. When balancing, a court is to be mindful that the decision to deny judicial relief to a party should not be made lightly. *Id.*

Viewing the facts of this case in light of this standard, and having carefully balanced this Court's interest in hearing a case involving a commercial activity with its desire to avoid matters of foreign affairs best left to the other two branches of the government, the Court concludes that the commercial activity exception of FISA does not limit the act of the state doctrine as applicable in this case. Although, as explored fully above, the TSDA does engage in some commercial activity, the nature of that commercial activity is not the crux of plaintiffs' complaint against the TSDA. Plaintiffs chief complaint revolves around East Timor's and the TSDA's decision regarding with whom they will partner to exploit its natural resources. East Timor's decision, embodied in the Timor Sea Treaty,

was an act of state. It chose to partner with defendants ConocoPhillips rather than plaintiffs. On balance, the Court is foreclosed from questioning the validity of East Timor's decision to sign and ratify the Timor Sea Treaty, including Annex F, and to confirm, as opposed to disavow, the production sharing contracts that were awarded back in 1991. Accordingly, the act of state doctrine bars the Court from adjudicating any of plaintiffs' claims against defendant TSDA and thus, all of plaintiffs' claims are dismissed.

IV. DEFENDANTS CONOCOPHILLIPS' MOTION TO DISMISS

A. Plaintiffs have asserted a legally cognizable injury-in-fact.

At the outset, defendants ConocoPhillips argue that plaintiffs do not have standing because they have failed to assert a concrete, particularized injury-in-fact. According to ConocoPhillips, since plaintiffs did not bid for a concession when a competitive bidding occurred in 1991, they cannot claim that they have been injured by "the loss of the opportunity ... to compete or bid" for the right to explore for oil and gas in the Timor Sea in 2002. ConocoPhillips contend that plaintiffs' claims rest on nothing more than their disappointment that East Timor and Australia did not disavow the concessions awarded in 1991 and establish a procedure to reallocate the concessions.

The case and controversy requirement of Article III requires plaintiffs to have suffered (1) an injury-in-fact (2) that is fairly traceable to the defendants' challenged conduct and (3) that is likely be redressed by a

favorable decision on the merits. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992).

Plaintiffs assert that bidding is not a prerequisite to injury when bidding was impossible or futile. In *Astech-Marmon, Inc. v. Lenoci*, 349 F.Supp.2d 265, 267 (D.Conn.2004), a contractor who regularly performed the city's asbestos work was informed that the removal of asbestos work was unavailable and would not be subject to the standard city bidding procedures. The city officials, including the mayor, were paid bribes and kickbacks to award the contracts during this period to the defendant companies. *Id.* at 268. The *Astech-Marmon* Court found that the defendants' unlawful actions effectively eliminated the bidding process and denied plaintiff substantial asbestos work, which caused plaintiff financial harm. *Id.* at 269. Although the plaintiff had not submitted a bid at the relevant time periods, the Court nonetheless found that the plaintiff had standing to pursue its RICO claims. *Id.*

Astech-Marmon is instructive to this case. Taking all of the factual allegations in the complaint as true, plaintiffs have demonstrated that ConocoPhillips' alleged wrongdoing caused plaintiffs' alleged injury. By 1991, ConocoPhillips had already won the favor of Indonesian officials, having bribed them for some time, thus rendering plaintiffs' participation in the bidding process futile. In essence, the die was already cast. Moreover, plaintiffs have shown that ConocoPhillips allegedly continued to use its influence in 2002 to convince the new East Timorese government to maintain the results of the tainted 1991 bidding process. Therefore, but for ConocoPhillips' alleged wrongful conduct, plaintiffs may have had an opportunity to try

to convince the East Timorese officials that they were better suited to be partnered with to explore the Timor Gap in 2002 for petroleum and natural gas. Their attempted meetings with East Timorese officials, however, were rebuked as a result of ConocoPhillips' alleged pattern of racketeering activity over many compounding years.[20] Accordingly, the Court concludes that the plaintiffs have sufficiently alleged a legally cognizable injury at this juncture. Namely they were harmed when they were deprived of a valuable business opportunity to develop oil and natural gas from the Timor Sea and of a fair opportunity to compete to secure that business opportunity due to the unlawful activities of ConocoPhillips.

B. The Court lacks personal jurisdiction over both the domestic subsidiary defendants and the foreign subsidiary defendants of ConocoPhillips.

In their Second Amended Complaint,[21] plaintiffs have named the two parent corporations, ConocoPhillips, organized under the laws of Delaware with a principal place of business in Houston, Texas, and ConocoPhillips Corporation, organized under the laws of Delaware and registered to do business in the District of Columbia, and 22 subsidiaries of ConocoPhillips, seven domestic and 15 Australian, as defendants in this case.[22] Defendants argue that the Second Amended Complaint should be dismissed with respect to the domestic and foreign subsidiaries of ConocoPhillips for lack of personal jurisdiction. ConocoPhillips argue that its subsidiaries lack the required requisite contact with District of Columbia, therefore, exercise of jurisdiction in this forum would offend traditional notions of fair play and substantial justice.

1. Lack of personal jurisdiction over the domestic subsidiary defendants.

With regard to its domestic subsidiaries, ConocoPhillips contends that plaintiffs have failed to properly serve them under RICO's service provision, therefore personal jurisdiction is lacking. Alternatively, the "ends of justice" do not require the domestic subsidiaries to be haled into this particular forum.

A federal court obtains personal jurisdiction over a defendant if it is able to serve process on him. *Butcher's Union Local No. 498, United Food and Commercial Workers v. SDC Investment, Inc.*, 788 F.2d 535, 538 (9th Cir.1986). In order to effect valid service of process, the federal court must meet two requirements: (1) some statute must authorize the service of process; and (2) the exercise of personal jurisdiction must not contravene any constitutionally protected right of the defendant. *Id.* If service is not authorized under a relevant federal statute, the federal court must rely on the jurisdictional statute of the state in which the federal court is located to obtain jurisdiction. Fed.R.Civ.P. 4. The plaintiff bears the burden of showing that the court has jurisdiction. *Butcher's Union*, 788 F.2d at 538.

The RICO statute invoked by plaintiff provides for nationwide personal jurisdiction over all domestic defendants to ensure that all co-conspirators can be brought before one judge in a single forum, regardless of the defendants' contact with the forum state. *See*18 U.S.C. § 1965. "[A]s long as one defendant is subject to service in a district, additional parties residing in other districts may be brought before the forum court" where

the "ends of justice require." 18 U.S.C. § 1965(b). *See Butcher's Union*, 788 F.2d at 539 ("[f]or nationwide service to be imposed under § 1965(b), the court must have personal jurisdiction over at least one of the participants in the alleged multi-district conspiracy and the plaintiffs must show that there is no other district in which a court will have personal jurisdiction over all of the alleged co-conspirators"); *Jin v. Ministry of State Security*, 335 F.Supp.2d 72, 84 n. 8 (D.D.C.2004) (noting how the D.C. Circuit has relied in part on the Ninth Circuit case, *Butcher's Union Local*, for a RICO jurisdictional issue). Moreover, in order for a plaintiff to avail itself of the benefits of nationwide service, it must effect service pursuant to RICO. *See AGS International Services, S .A. v. Newmont USA Limited*, 346 F.Supp.2d 64, 86-88 (D.D.C.2004).

Plaintiffs admit that they have failed to avail themselves of the benefits of nationwide service under RICO because plaintiffs did not serve the domestic subsidiaries under RICO's service provision. However, plaintiffs' argue, they were not required to effect service due to a stipulation entered into by the plaintiffs and defendants ConocoPhillips. According to the plaintiffs, ConocoPhillips agreed not to challenge the sufficiency of process or of service of process in a stipulation entered into by the parties on June 1, 2004.[23] While acknowledging the stipulation, ConocoPhillips responds that the same stipulation also expressly states that ConocoPhillips may assert any defenses or objections, including but not limited to lack of personal jurisdiction or improper venue.[24]

The Court concludes that ConocoPhillips' challenge of personal jurisdiction based on plaintiffs' failure to

comply with a nationwide service provision of RICO is not barred by the parties' June 1, 2004 stipulation. ConocoPhillips is not challenging the sufficiency of process or service of process, rather they are challenging personal jurisdiction based on plaintiffs' failure to comply with a nationwide service provision. Plaintiffs were not required to effect service pursuant to RICO in this case, but their failure to do so means that they cannot avail themselves of the benefits of nationwide service. Therefore, because plaintiffs failed to effect service to the domestic subsidiaries pursuant to the RICO's service provision, the Court lacks personal jurisdiction over ConocoPhillips' domestic subsidiaries. Accordingly, ConocoPhillips' domestic subsidiaries shall be dismissed without prejudice from this suit.

2. Lack of personal jurisdiction over the foreign subsidiary defendants.

*13 Plaintiffs allege that the Court has personal jurisdiction over the foreign subsidiary defendants under the alter ego theory. Alternatively, plaintiffs posit that the Court has personal jurisdiction over the foreign subsidiaries under Federal Rule of Civil Procedure 4(k)(2).

The courts will impute personal jurisdiction under an alter ego theory in cases where the parent company "so dominated the [subsidiary] corporation as to negate its separate personality." *Material Supply International Inc. v. Sunmatch Industrial Co., Ltd .*, 62 F.Supp.2d 13, 20 (D.D.C.1999). The following factors are helpful to determine whether there exists such a unity of interest and ownership that the separate personalities of the

subsidiary and parent company have merged:

> [W]hether parent and subsidiary have common business departments; whether the parent finances the subsidiary; whether the parent incorporated the subsidiary; whether the subsidiary is inadequately capitalized; whether parent and subsidiary file consolidated financial statements and tax returns; whether they have a joint accounting and payroll system; whether the subsidiary is operated as a mere division of the parent; whether the subsidiary depends on the parent for substantially all of its business; whether the subsidiary's obligations are assumed to be those of the parent; whether the subsidiary's property is used by the parent as its own; and whether the subsidiary is operated exclusively in the interest of the parent. *Id.*

Additionally, it is not relevant that the parent ultimately benefitted from the activities of the subsidiary or that the subsidiary's supervisors reported to the parent. *Id.*

Plaintiffs, in a very conclusory manner, assert that ConocoPhillips' foreign subsidiaries "are financed by the parent, are operated in the interest of the parent, and are mere divisions of the parent"[25], therefore exercise of personal jurisdiction is proper. Such unsubstantiated, conclusory statements fail to provide the Court with sufficient information as to the nature of the relationship between parent ConocoPhillips and its foreign subsidiaries. The paucity of individualized evidence[26] as to what is the actual, existing relationship between the parent ConocoPhillips with each of the 15 foreign subsidiaries leads the Court to conclude that it

cannot make an informed assessment as to whether the Court has personal jurisdiction over them under the alter ego theory. Further, in its Order of February 9, 2005, the Court directed plaintiffs to allege specific jurisdictional facts supporting this Court's jurisdiction over each of the foreign subsidiary defendants.[27] Plaintiffs have failed to do so and therefore, the Court cannot concede that it has personal jurisdiction over ConocoPhillips' foreign subsidiaries.

Turning to plaintiffs' alternative contention that the Court has personal jurisdiction over the foreign subsidiaries under Federal Rule of Civil Procedure 4(k)(2), that argument must also fall. Rule 4(k)(2) allows a federal court to assert jurisdiction in cases "arising under federal law" when the defendant is not subject to personal jurisdiction in any state court, but has contacts with the United States as a whole. *Base Metal Trading, Limited v. OJSC "Novokuznetsky Aluminum Factory"*, 283 F.3d 208, 215 (4th Cir.2002). A plaintiff who seeks to invoke Rule 4(k)(2) as a basis for jurisdiction must show the following: (1) plaintiff's claim arises under federal law; (2) the defendant is beyond the jurisdictional reach of any state court of general jurisdiction; (3) the federal court's exercise of personal jurisdiction over the defendant must not offend the Constitution or other federal law. *Briton v. Palestinian Interim Self-Government Authority*, 310 F.Supp.2d 172, 177 (D.D.C.2004). Rule 4(k)(2) therefore "allows a district court to acquire jurisdiction over a foreign defendant which has insufficient contacts with any single state but has contacts with the United States as a whole." *In re Vitamins Antitrust Litigation*, 94 F.Supp.2d 26, 31 (D.D.C.2000).

*14 In applying this test in this case, the question is whether the foreign subsidiary defendants have sufficient minimum contacts with the United States so as not to offend traditional notions of fair play and substantial justice as required under the Due Process Clause of the Fifth Amendment. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (the constitutional touchstone of due process analysis is "whether the defendant purposefully established minimum contacts in the forum" and "[t]he foreseeablility that is critical to due process analysis ... is that the defendant's conduct and connection with the forum ... are such that he would reasonably anticipate being haled into court there."). The Court finds that the plaintiffs have failed to proffer adequate evidence to demonstrate that the foreign subsidiary defendants have had sufficient contacts with the United States as a whole to justify general personal jurisdiction.

Plaintiffs, in broad strokes, again assert in a conclusory manner that all of the 15 foreign subsidiaries have "sufficient nationwide contacts" for the Court to assert jurisdiction, including "sale of oil production from the Elang/Kakatua field in the Timor Sea" to the United States, and as signatories to production sharing contracts, they make deposits into the TSDA's bank accounts in New York.[28] These statements by the plaintiffs are simple, unsubstantiated assertions lacking in any concrete evidence. Without more, the Court has no basis for exercising jurisdiction over foreign subsidiaries with little or no connection to the United States. *See Base Metal Trading*, 283 F.3d at 216 (finding no basis for jurisdiction under Rule 4(k)(2) upon plaintiff's allegations that defendant "is a major aluminum producer in Russia and has extensive

business contacts inside Russia as well as around the world including in the United States."); *BP Chemicals LTD v. Formosa Chemical & Fibre Corp.*, 229 F.3d 254, 261 (the following facts did not constitute minimum contacts: defendant placing orders in Taiwan with U.S. based suppliers, sending correspondence from Taiwan to the U.S. regarding those orders, and defendant's agreement to arbitrate with supplier in New York.) In sum, the contacts alleged by the plaintiffs do not constitute sufficient nationwide contacts for this Court to exert personal jurisdiction over the foreign subsidiary defendants. Accordingly, ConocoPhillips' foreign subsidiaries shall be dismissed from this suit.

C. The act of state doctrine does not bar this Court from hearing plaintiff's claims against defendant ConocoPhillips.

The Court has extensively discussed the act of state doctrine in the above section discussing defendant TSDA's motion to dismiss. Whereas the Court found that the act of state doctrine barred it from adjudicating any of the plaintiffs' claims against defendant TSDA, the same is not true for plaintiffs' claims against defendants ConocoPhillips. ConocoPhillips cannot invoke the act of state defense as a bar to plaintiffs' claims.

W.S. Kirkpatrick, 493 U.S. at 400, is the controlling case here. In *W.S. Kirkpatrick*, plaintiffs alleged that defendant W.S. Kirkpatrick bribed Nigerian officials in order to obtain contracts from the Nigerian government and to keep the plaintiff from winning such contracts. *W.S. Kirkpatrick*, 493 U.S. at 401-01. The *W.S. Kirkpatrick* Court rejected the argument that the

act of state doctrine barred plaintiff's claims for damages resulting from defendant's bribery of a Nigerian government official. *Id.* at 405. The Court observed that neither the claims or defenses asserted required a determination by the Court that the contracts entered into by the Nigerian government and the defendant had to be invalidated or declared ineffective. *Id.* at 406. The plaintiff was not trying to undo a foreign government's sovereign action, rather the plaintiff only sought to obtain damages from the defendant who had procured it by unlawful means. *Id.* at 407.

The facts of *W.S. Kirkpatrick* could not be more similar to plaintiffs' cause of action against defendants ConocoPhillips in this case. None of the claims or defenses asserted by either the plaintiffs or ConocoPhillips require this Court to determine that ConocoPhillips' production sharing contracts with the TSDA is ineffective. The legality or the illegality of the contracts is not a question to be determined in this suit by plaintiffs against ConocoPhillips. Rather the focus lies in CONOCOPHILLIPS' unlawful conduct and how that conduct resulted in harm to the plaintiffs. Therefore, the act of state doctrine is not a bar to plaintiffs' claims against defendants ConocoPhillips.

D. Plaintiffs have pleaded facts sufficient to establish RICO claims.

ConocoPhillips argues that plaintiffs (1) have not pleaded facts sufficient to establish that RICO applies to the extraterritorial conduct alleged in this case; (2) have not shown that an "enterprise" existed; (3) have not pleaded with specificity the "participation

requirement"; (4) have not established a "pattern of racketeering activity"; (5) have not satisfied RICO's injury[29] requirement; and (6) have not established a RICO conspiracy.[30]

Having accepted all of the complaint's[31] factual allegations and drawing all inferences to the benefit of the plaintiffs, the Court is persuaded that plaintiffs have sufficiently pleaded facts to make out a RICO claim against ConocoPhillips.

1. Rico applies to the extraterritorial conduct alleged in this case.

"The anti-fraud laws of the United States may be given extraterritorial reach whenever a predominantly foreign transaction has substantial effects within the United States." *Consol. Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 261-62 (2d Cir.1989).[32] This test is met when the domestic effect is "a direct and foreseeable result of the conduct outside of the United States." *Id.* at 262. By contrast, "courts have been reluctant to apply our laws to transactions that have only remote and indirect effects in the United States." *Id.*

RICO applies to the extraterritorial acts alleged in this case. At this stage, plaintiffs' complaint sufficiently demonstrates that the alleged misconduct, including money laundering, took place in the United States. Further, under the "effects test," as articulated by *Minorco*, ConocoPhillips' alleged unlawful conduct had a substantial effect in the United States. *See Minorco*, 871 F.2d at 262. Namely, ConocoPhillips imported petroleum to the United States, deposited the proceeds

from the sale of this petroleum to a bank in the United States, and its conduct directly caused plaintiffs financial harm in the United States. Therefore, RICO applies to the extraterritorial conduct alleged.

2. Plaintiffs have sufficiently pleaded the existence of an enterprise.

An enterprise "is established by common purpose among the participants, organization, and continuity." *United States v. Perholtz*, 842 F.2d 343, 362 (D.C.Cir.1988). At the motion to dismiss stage, plaintiffs need only plead the existence of an enterprise. *Ago v. Begg*, 1988 WL 75224 (D.D.C. Feb. 24, 1988).

At this stage, the Court concludes that plaintiffs have sufficiently demonstrated that defendants ConocoPhillips were part of an enterprise. An enterprise was established when the defendants sought a common goal and purpose, which was to attain financial and economic benefits that flowed from entering into production sharing contracts with the TSDA. The goal of obtaining the proceeds of these contracts motivated ConocoPhillips and other members of the enterprise throughout all relevant time periods to commit their alleged unlawful conduct. *See Perholtz*, 842 F.2d at 358.

2. Plaintiffs have sufficiently pleaded that ConocoPhillips participated in the enterprise.

A person participates in a RICO enterprise so long as he "takes part in the conduct of the enterprise." *U.S. v. Oreto*, 37 F.3d 739, 750 (1st Cir.1994). It is not necessary that the defendants have formal positions in

the enterprise. *Reeves v. Ernst & Young*, 507 U.S. 170, 179 (1993). The Court finds that sufficient facts have been alleged at this juncture by the plaintiffs for it to conclude that ConocoPhillips participated in the affairs of the enterprise by allegedly undertaking schemes to bribe first, Indonesian, and then East Timorese officials.

4. Plaintiffs have sufficiently alleged to support a pattern of racketeering activity.

In order to prove a pattern of racketeering activity, a plaintiff must show at least two racketeering predicates that are related, and that they amount to or pose a threat of continued criminal activity. *H.J. Inc. v. Northwestern Bell Telephone*, 492 U.S. 229, 238-9 (1989). *See also Western Associates Limited Partnership v. Market Square Assocs.*, 235 F.3d 629, 633-35 (D.C.Cir.2001) (plaintiff must alleged either a series of related predicates extending over a substantial period of time; or a specific threat of repetition extending indefinitely into the future).

In *H.J. Inc.*, for a period of 6 years, the defendants at various, intermittent times bribed government officials in different manners with the goal of benefitting their business. *H.J. Inc.*, 492 U.S. at 251. The Court found that their conduct established a pattern of RICO activities. *Id.*

The facts alleged in this case are much like the facts of *H.J. Inc.* Plaintiffs assert that over a period of at least a decade, ConocoPhillips continuously bribed Indonesian and then East Timorese government officials, which caused them to award ConocoPhillips production

sharing contracts for areas of the Timor Gap, first in 1991, and then again in 2002. The Court finds that plaintiffs have demonstrated that the racketeering predicates are related and constitute a continuous criminal activity. See *H.J. Inc.*, 492 U .S. at 251 (concluding that the acts of bribery were related by a common purpose, which was to influence officials to win contracts, and the frequency of the bribes indicated continuity). Therefore, a pattern of racketeering activity has been sufficiently established by the plaintiffs at this stage of the litigation.

5. ***Plaintiffs have alleged a RICO conspiracy.***

"A conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense." *Salinas v. U.S.*, 522 U.S. 52, 63 (1997). In fact, if the partners in the criminal plan agree to pursue the same criminal objective and divide up the work, each is responsible for the acts of each other. *Id.* at 63-64. "A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor." *Id.* at 65.

Plaintiffs have sufficiently shown that ConocoPhillips and their coconspirators.[33] had the same criminal objective and were ultimately successful in carrying forth that objective. Namely, ConocoPhillips conspired to bribe officials, and in the process, engaged in money laundering and other unlawful monetary transactions, all in furtherance of their goal of obtaining and maintaining the lucrative production sharing contracts.[34] Therefore, plaintiffs have adequately

alleged a RICO conspiracy under 18 U.S.C. § 1262(d).

E. Plaintiffs have sufficiently alleged a Robinson-Patman Act claim.

Defendants ConocoPhillips argue that the Robinson-Patman Act does not apply extraterritorially to the conduct at issue in this case and, therefore, that the Court lacks subject matter jurisdiction. *See*15 U.S.C. §§ 13, 13a, 13b, 21a. ConocoPhillips maintain that the challenged conduct and the resulting injury occurred overseas and American antitrust laws do not reached alleged anticompetitive conduct anywhere in the world, in the absence of any direct adverse effect on competition in the United States. Alternatively, ConocoPhillips assert the Act is not applicable because the transactions at issue do not involve "the sale or purchase of goods, wares or merchandise." *See*15 U.S.C. § 13(c).

In order to allege an action under § 2(c) of the Robinson-Patman Act, *codified in*15 U.S.C. § 13(a), plaintiffs must show that the unlawful conduct occurred "in commerce" or "in the course of such commerce." Commerce is defined in 15 U.S.C. § 12 as "trade or commerce among the several States and with foreign nations." The Supreme Court in *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 195 (1974) held that "in commerce" under the Robinson-Patman Act "denote[s] only person or activities within the flow of interstate commerce-the practical economic continuity in the generation of goods and services for interstate markets and their transport and distribution to the consumer." *Gulf Oil Corp.*, 419 U.S. at 195. The Court further stated that it is not enough to show that the allegedly

anti-competitive acquisitions and activities affected commerce. *Id.* Therefore, in order for the Robinson-Patman Act to apply extraterritorially to the conduct at issue, plaintiffs must show that ConocoPhillips' unlawful conduct occurred "in commerce."[35]

The Supreme Court has cautioned that in anti-trust cases, where the proof is largely in the hands of the alleged conspirators, "dismissal prior to giving the plaintiff ample opportunity for discovery should be granted very sparingly." *Hospital Bldg. Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 746 (1976). In view of that rigorous standard, the Court is persuaded at this motion to dismiss stage that plaintiffs have sufficiently alleged a claim under the Robinson-Patman Act. According to the plaintiffs, ConocoPhillips' wrongful activity did occur within the flow of commerce with a foreign nation.[36] ConocoPhillips provided commission, brokerage or other compensation to East Timorese officials, not for any services rendered in connection with the sale or purchase of goods, wares or merchandise, but to gain a competitive advantage over the plaintiffs. Such improper conduct on the part of ConocoPhillips enabled them to procure production sharing contracts for production of oil and natural gas in the Timor Gap.

Turning to ConocoPhillips alternative argument, the Court concludes that this case does involve "services rendered in connection with the sale or purchase of goods, wares, or merchandise ." What is involved in this case are production sharing contracts which permit ConocoPhillips to develop, produce, market, and sell oil and natural gas for profit.[37] Therefore, plaintiffs' claim under the Robinson-Patman Act does involve "sale or

purchase of goods, wares, or merchandise." In sum, the plaintiffs have properly alleged a Robinson-Patman Act claim at this time.

F. Plaintiffs' Lanham Act claim fails as a matter of law.

Plaintiffs allege that the Lanham Act, which implements the Paris Convention, provides them with relief for a separate claim of unfair competition. In support of their argument, plaintiffs rely on *General Motors Corp v. Ignacio Arriortua*, 948 F.Supp. 684 (E.D.Mich.1996). The holding of that case, however, is contrary to the holdings of at least five different Circuits.[38] ConocoPhillips argue that plaintiffs' claims alleging a violation of the Lanham Act fail as a matter of law because the Lanham Act does not cover the wrongdoing alleged by the plaintiffs.

The Lanham Act, generally, prohibits two types of unfair competition: trademark infringement, *see*15 U.S.C. § 1114, and false designation of origin or passing off, *see*15 U.S.C. § 1125. Further, § 44 of the Lanham Act, *codified in*15 U.S.C. § 1126(b)[39], also implements Article 10 *bis* of the Paris Convention. Article 10 *bis* requires member countries "to assure to nationals of other member countries effective protection against unfair competition." Paris Convention, Art. 10 *bis*, 21 U.S.T. at 1648.

The Court disagrees with plaintiffs' contention that Article 10 *bis* of the Paris Convention requires signatory nations to prohibit unfair competition more generally and broadly, beyond trademark infringement and false designation of origin or passing off. The

majority of the courts that have dealt with this question have concluded that "Article 10 *bis* itself does not create additional substantive rights." *Grupo Gigante SA de CV v. Dallo & Co.*, 391 F.3d 1088, 1099-1100 (9th Cir.2004). "Rather, the Paris Convention ensures that foreign nationals should be given the same treatment in each of the member countries as that country makes available to its own citizens as to trademark and related rights." *Id. See also International Café v. Hard Rock Café*, 252 F.3d 1274 (11th Cir.2001) ("[w]e agree that section 44 of the Lanham Act incorporated, to some degree, the Paris Convention. But we disagree that the Paris Convention created substantive rights beyond those independently provided in the Lanham Act. As other court of appeals have noted, the rights articulated in the Paris Convention do not exceed the rights conferred by the Lanham Act"); *Barcelona.com v. Excelentisimo Ayuntamiento de Barcelona*, 330 F.3d 617 (4th Cir.2003) ("[t]he rights articulated in the Paris Convention do not exceed the rights conferred by the Lanham Act"); *L'Aiglon Apparel v. Lana Lobell, Inc.*, 214 F.2d 649 (3d Cir.1954) (after examining the legislative history of the Lanham Act, court concluded that the "Lanham Act was not intended to bring all unfair competition in commerce within federal jurisdiction").

Because the Lanham Act protects only against forms of unfair competition related to trademark infringement, false designation of original and other related theories, plaintiffs' Lanham Act claim falls outside the scope of the Act. Accordingly, plaintiffs' claim under the Lanham Act against defendants ConocoPhillips is dismissed.

G. Plaintiffs' Common Law Claims

Plaintiffs have raised three common law claims: (1) intentional interference with prospective economic advantage; (2) unjust enrichment; and (3) unfair competition. The Court finds that plaintiffs have failed to state a claim for unjust enrichment, therefore, that claim is dismissed. Plaintiffs have stated a claim for intentional interference with prospective economic advantage and unfair competition.

1. Plaintiffs have stated a claim for intentional interference with prospective economic advantage.

Defendants CONOCOPHILLIPS posit that plaintiffs have failed to establish their intentional interference with prospective economic advantage ("IIPEA") claim because they have failed to show the existence of a reasonable likelihood or probability that, but for the alleged interference, a contract would have resulted.

Under the law of the District of Columbia, intentional interference with prospective economic advantage has four elements: (1) the existence of a valid business relationship or expectancy; (2) knowledge of the relationship or expectancy on the part of the interferer; (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage. *Riggs v. Home Builders Inst.*, 203 F.Supp.2d 1, 23 (D.D.C.2002).

A protected relationship exists only if there is a reasonable likelihood or probability that a business relationship would have resulted-something beyond a mere hope. *Tose v. First Pennsylvania Bank, N.A.*, 648

F.2d 879, 898 (3d Cir.1981). *See also Ellsworth Associates v. U.S.*, 917 F.Supp. 841, 849 (D.D.C.1996)(holding that plaintiffs failed to state a claim for tortious interference with business relations because they cannot and do not allege that they would have received the contract); *Klein v. Grynberg*, 44 F.3d 1497, 1506 (10th Cir.1995) (tortious interference requires reasonable likelihood that contract would have resulted and not just mere hope); *Fishman v. Estate of Wirth*, 807 F.2d 520, 545 (7th Cir.1986) (no tortious interference when plaintiff had no unconditional right under the contract, but only a mere expectancy prior to third party approval).

Plaintiffs allege that, but for ConocoPhillips' interference, they would have been prime candidates for receiving production sharing contracts from the TSDA. The Court agrees that there was a reasonable likelihood, as opposed to a mere hope or speculative expectation, that plaintiffs would have received concession rights from the TSDA post East Timor's independence in 2002. Plaintiffs have sufficiently shown that they had invested a significant amount of research and resources in analyzing and developing ways to explore for and produce petroleum and natural gas in the Timor Gap since the 1970s. Therefore, plaintiffs have demonstrated a reasonable likelihood or probability that, but for the alleged interference by ConocoPhillips, a contract would have resulted. Accordingly, plaintiffs have stated a claim for IIPEA.

2. Plaintiffs have failed to state a claim for unjust enrichment as a matter of law.

Unjust enrichment refers to a quasi-contract theory.

Fred Ezra Co., v. Peas, 682 A.2d 173, 175 (D.C.1986).[40] To state a claim for unjust enrichment, plaintiffs must establish that: (1) they conferred a legally cognizable benefit upon defendants; (2) defendants possessed an appreciation or knowledge of the benefit; and (3) defendants accepted or retained the benefit under inequitable circumstances. *In re Lorazepam & Clorazepate Antitrust Litigation*, 295 F.Supp.2d 30, 51 (D.D.C.20003).[41] "To qualify for an award of restitution under this theory, plaintiffs must show that they conferred a benefit (usually money) on defendants under circumstances in which it would be unjust or inequitable for defendants to retain the benefit." *Id.* "A necessary element of a claim of unjust enrichment is that the plaintiff conferred a benefit on the defendant." *Id.*

Plaintiffs have failed to state a claim for unjust enrichment because they have failed to allege that they have conferred a benefit on the defendants. Rather, any benefit to the defendants were conferred by a third party, the TSDA, at the directive of East Timor and Australia. Further, a disappointed bidder for a government contract cannot maintain an unjust enrichment cause of action against a successful bidder for the value of that contract. *Ellsworth Associates*, 917 F.Supp. at 848-49. *See also Tao of Systems Integration, Inc. v. Analytical Services & Materials*, 299 F.Supp.2d 565, 576 (E.D.Va.2004). This is so because in order to bring an action to recover monies received by ConocoPhillips from the governments of East Timor and Australia, plaintiffs must demonstrate that they had a preexisting right to that fund. *See Id* . This the plaintiffs cannot do because they had no preexisting right to a production sharing contract to the Timor Gap.

Accordingly, the claim of unjust enrichment against defendants ConocoPhillips is dismissed.

3. Plaintiffs have stated a claim for unfair competition.

Unfair competition is not defined in terms of specific elements but by the description of various acts that would constitute the tort if they resulted in damages. *Furash & Col., Inc. v. McClave,* 130 F.Supp.2d 48, 57 (D.D.C.2001)[42] Commercial bribery constitutes unfair competition. *See B & W Management, Inc. v. Tasea Investment Co.,* 451 A.2d 879, 881 n. 3[43] (D.C.1982)(noting that commercial bribery may constitute unfair competition at common law); *Business Equipment Center v. DeJure-Amsco, Corp.,* 465 F.Supp. 775 (D.D.C.1978) (finding that whereas refusal to deal is not an act of unfair competition, defamation of plaintiff or disparagement of its goods or business methods constitute unfair competition).

The gravamen of the plaintiffs' complaint is that ConocoPhillips' acts of bribery of government officials deprived them of the opportunity to compete for production sharing contracts for oil and natural gas rights in the Timor Gap. Therefore, the Court finds that the plaintiffs have stated a claim for unfair competition.

V. CONCLUSION

For the aforementioned reasons, the Court concludes that defendant TSDA's motion to dismiss is granted because the act of state doctrine precludes this Court from adjudicating any of plaintiffs' claims against the TSDA.

Further, defendant ConocoPhillips motion to dismiss is granted in part and denied in part. The Court finds the following: (1) the act of state doctrine does not bar this Court from adjudicating plaintiffs' claims against defendants ConocoPhillips; (2) the Court does not have personal jurisdiction over ConocoPhillips' domestic subsidiary defendants or its foreign subsidiary defendants; (3) plaintiffs have stated a claim under RICO and the Robinson-Patman Act, but have failed to state a claim under the Lanham Act; (4) plaintiffs have stated a claim for intentional interference with prospective economic advantage and unfair competition, but have failed to state a claim for unjust enrichment.

An appropriate Order accompanies this Memorandum Opinion.

n1. Because the facts of this case are quite involved, the Court will focus only on those facts that are relevant to the pending motions. The facts are taken from plaintiffs' second amended complaint (Doc. No. 81), defendants' motions to dismiss plaintiffs' amended complaint (Doc. Nos. 21 and 23), and the documents incorporated by reference therein. The defendants in their motions to dismiss the second amended complaint (Doc Nos. 83 and 84) do not repeat the facts laid out in their original motions to dismiss plaintiffs' amended complaint. Rather, they acknowledge the Court's familiarity of the facts and proceed with their arguments.

n.2 The seabed boundary between Australia and East Timor has long been disputed. In the early 1970s, Australia and Indonesia negotiated a series of

agreements delineating the maritime border between the two nations. Portugal, then the colonial sovereign of Timor, and Australia, however, were unable to reach an agreement, resulting in a gap in the maritime boundary where it passed eastern Timor. Both Portugal and Australia asserted conflicting claims over the resulting "Timor Gap" region.

n.3 Defendants ConocoPhillips, ConocoPhillips Company, and the 22 different domestic and foreign subsidiaries of ConocoPhillips are referred to as "ConocoPhillips" herein.

n.4 According to the plaintiffs, ConocoPhillips' success resulted in part from their survey and geological data, which was stolen by the Indonesian military and allegedly provided to ConocoPhillips.

n.5 Another reason why the plaintiffs may have abstained from bidding is that on February 22, 1991, Portugal initiated an action challenging the Indonesian invasion, and Australia's and Indonesia's establishment of the Joint Authority to develop oil and natural gas in the Timor Gap in the International Court of Justice. Plaintiffs were interested in seeing the outcome of that litigation. On June 20, 1995, the International Court of Justice held, by a 14 to 2 vote, that it could not reach the merits of Portugal's claim.

n.6 Plaintiffs characterize the TSDA as a commercial entity but they do not provide any evidence to support their assertion. *See* Pls.' Opp. to TSDA's Mot. to Dismiss, p. 25 (TSDA is "a commercial entity created by foreign sovereigns for the sole purpose of entering into production sharing contracts with private

companies and engaging in the production and marketing of oil and natural gas.").

n.7 *See* Timor Sea Treaty, May 20, 2002, Austl.-East Timor, 2003 Austl. T.S. No. 13, Art.6.

n.8 *See* Risa Declaration ¶ 2, 5, attached to defendant TSDA's motion to dismiss second amended complaint (Doc. No. 83).

n.9 *See* Ex. 5 and 6 to Risa Declaration.

n.10 As of the Risa Declaration dated March 24, 2005, "[a]ll petroleum that has been shipped from the Joint Petroleum Development area to the United States and other countries has been shipped there as a result of marketing and sales decisions made by the contractors ." Risa Decl. ¶ 13.

n.11 The TSDA does not respond to the plaintiffs' argument that the Court has personal jurisdiction over the TSDA. Regardless, the Court here notes that it does have personal jurisdiction over the TSDA under 28 U.S.C. § 1330(b). Section 1330(b) provides that once service has been properly made under 28 U.S.C. § 1608, personal jurisdiction exists over a foreign state for every claim over which the Court as subject matter jurisdiction. *See Prince v. Socialist People's Libyan Arab Jamhiriya*, 294 F.3d 82, 89 (D.C.Cir .2002). The TSDA stipulated that it was properly served in a June 1, 2004 stipulation filed with the Court, which was approved by the Court in a June 2, 2004 Minute Order.

n.12 Sec. Am. Compl. ¶ 1.

n.13 Timor Sea Treaty, May 20, 2002, Austl.-East Timor, 2003 Austl. T.S. No. 13, Annex F.

n.14 *See* Timor Sea Treaty, May 20, 2002, Austl.-East Timor, 2003 Austl. T.S. No. 13, Art. 6.

n.15 *Id.*

n.16 *Id.* at Annex C.

n.17 *Id.*

n.18 Plaintiffs insist that adjudication of their claims would only require an inquiry into East Timor's motivations to confirm ConocoPhillips' contracts. Plaintiffs are not asking the Court to validate or invalidate any acts taken by East Timor. *See* Pls.' Opp. to TSDA's Mot. to Dismiss, p. 24. That argument misses the mark, however. Whereas in *W.S. Kirkpatrick* neither the claim or any of the asserted defenses required a determination that Nigeria's contract with the defendant company was or was not effective; here plaintiffs' claims are premised on the TSDA undoing or disregarding an official directive mandated by Australia and East Timor. Further, the Timor Sea Treaty, including Annex F, was ratified by two legislatures, whereas the procurement contract in *W.S. Kirkpatrick* did not require such actions. It is one thing to question the motives of an official in approving a contract, and quite another to question the motives of an entire foreign legislature in ratifying a treaty.

Moreover, the TSDA was not created unilaterally by East Timor, rather it is a regulatory agency jointly created by Australia and East Timor, and the plaintiffs

have not raised any allegations that Australian officials have been bribed.

Finally, plaintiffs allege that they are not asking the Court to declare Annex F to be invalid because they are not seeking declaratory or injunctive relief, but rather monetary damages. The nature of relief sought does not determine whether an act of state is implicated or not. Regardless of the type of relief sought, plaintiffs are asking the Court to deem invalid an act of two foreign sovereigns taken within their own respective jurisdictions.

n.19 In *Dominicus Americana Bhoio*, the plaintiffs alleged that their efforts to try to build tourist facilities in a resort area of La Romana in Dominican Republic were hindered by the illegal acts of the defendants who owned and operated existing tourist facilities in La Romana. One allegation involved the defendants fraudulently encouraging the Dominican government to expropriate private lands, including the lands owned by plaintiffs, to create a national park. The Dominican government issued a decree endorsing the creation of the national park, however, the decree was rescinded when the government discovered that it involved confiscation of plaintiffs' property. The *Dominicus* Court stated that the expropriation by the Dominican government of plaintiffs' property to create a national park would appear to fall under the act of state doctrine. However, "the allegations here that government actions were procured by fraud and coercion thus suffice to preclude application of the act of state doctrine even to the expropriation issue at this stage of the litigation." *Dominicus Americana Bhoio*, 473 F.Supp. at 691.

n.20. *See* Sec. Amend. Compl. ¶¶ 112-127.

n.21. *Id. at* ¶¶ 12-35.

n.22 Footnote 8 of ConocoPhillips' Mot. to Dismiss notes that one of its domestic subsidiaries, the Phillips Petroleum Company ZOC, named as a defendant in this case, no longer exists.

n.23 Stipulation and Proposed Order Regarding Extension of Time to Respond to Amended Complaint (Doc. No. 19)(hereinafter "stipulation"), June 1, 2004 at p. 2 ("The undersigned defendants will not challenge the sufficiency of process or the service of process with respect to the March 1, 2004 Complaint or May 26, 2004 Amended Complaint.") The stipulation was approved by the Court in a June 2, 2004 Minute Order.

n.24 *See Id.* at 2 ("This stipulation and agreement of the parties is without prejudice to, and the ConocoPhillips Defendants and the Designated Authority do not waive, any defense that ConocoPhillips Defendants or the Designated Authority may assert in any motion or responsive pleading, including but not limited to any defenses or objections regarding lack of personal jurisdiction or improper venue ...").

n.25 Pls.' Opp. to ConocoPhillips' Mot. to Dismiss, p. 41. Plaintiffs also provide the following evidence to support their alter ego theory: ConocoPhillips' CEO and top executives travel to Australia, which indicates that the parent company's executives are involved with ConocoPhillips' projects in the Timor Sea region; ConocoPhillips' 2002 annual report states that

ConocoPhillips has a large project under way in the Timor Sea; ConocoPhillips' foreign subsidiaries list "ConocoPhillips" as the "ultimate holding company"; and many of the Australian subsidiaries have the same, or substantially similar, directors and officers, some of whom reside in the U.S. *Id.* at p. 42.

n.26 Plaintiffs fail to apply any of the factors articulated in *Sunmatch:* whether ConocoPhillips and each of its foreign subsidiary has a common business department; whether ConocoPhillips finances each foreign subsidiary; whether each foreign subsidiary is inadequately capitalized; whether ConocoPhillips and each foreign subsidiary file a joint financial statement and tax returns or have a joint accounting and payroll system; whether each foreign subsidiary operates as a mere division of ConocoPhillips; whether each foreign subsidiary depends on ConocoPhillips for substantially all of its business; and whether each foreign subsidiary operates exclusively in ConocoPhillips' interests.

n.27 *See Oceanic Exploration Co. v. ConocoPhillips, Inc.*, Case No. 04-332, Order, Feb. 9, 2005.

n.28 Pls.' Opp. to ConocoPhillips' Mot. to Dismiss, p. 44-45.

n.29 The Court incorporates here its discussion of standing in the section above. In view of that analysis, the Court is persuaded at this juncture that plaintiffs were injured when ConocoPhillips deprived them of the valuable business opportunity to compete for production sharing contracts.

n.30 A cause of action under 18 U.S.C. § 1962 consists

of seven elements. *See*18 U.S.C. § 1962(c); *Fiore v. Kelly Run Sanitation*, 609 F. Supp. 909, 916-17 (W.D.Pa.1985). There must be (1) a defendant who (2) through the commission of two or more acts (3) constituting a pattern of (4) racketeering activity (5) directly or indirectly invests in or maintains an interest in, or participates in (6) an enterprise, (7) the activities of which affect interstate commerce. *Id.*

n.31 When the Court talks about the complaint, it is referring to plaintiffs' second amended complaint.

n.32 *See also Doe I v. Unocal Corp.*, 395 F.3d 932, 961-62 (9th Cir.2002) (agreeing with the Second Circuit that RICO applies extraterritorially when the claim meets either the "effect" or the "conduct" test.)

n.33 The Court notes that a defendant may be held liable for having participated in a conspiracy even though its co-conspirators are not defendants to the action. *See U.S. Indus. v. Touche Ross & Co.*, 854 F.2d 1223, 1252 (10th Cir.1988) ("[i]t is axiomatic that since co-conspirators are jointly and severally liable for all damages cause by a conspiracy, a private plaintiff need not sue all the conspirators, but may choose to proceed against any one or more of them.").

n.34 In its Sec. Am. Compl., plaintiffs detail ConocoPhillips alleged long history of corrupt activities in Indonesia and then in East Timor, including how ConocoPhillips channeled its bribes to governmental officials. *See* Sec. Am. Compl. ¶¶ 59-62, 89-95, 99-103, 107, 128, 137-38.

n.35 Although the jurisdictional language is slightly

different in subsections (a), (c), (d), and (e) of § 2 of the RobinsonPatman Act, the jurisdictional provision are coextensive in scope. *See Rotec Industries, Inc. v. Mitsubishi Corp.*, 348 F.3d 1116 (10th Cir.2003)(holding that the jurisdictional analysis under § 2(c) of the Robinson-Patman Act is governed by the standard announced by the Supreme Court in *Gulf Oil* and, therefore, the reach of § 2(c) extends only to persons and activities which are themselves within the flow of commerce among the states or with foreign nations, but does not extend to all activities which affect such commerce).

n.36 ConocoPhillips relies on *F. Hoffman-LaRoche Ltd. v. Empagran S.A.*, 542 U.S. 155 (2004) for its argument that the Court lacks subject matter jurisdiction. The case is inapposite for it deals with a completely different statute and the facts involve foreign plaintiffs asserting an antitrust claim based on purely foreign conduct that caused foreign harm.

n.37 Some cases where the transactions did not constitute a sale of "goods, wares or merchandise" under the Robinson-Patman Act were those involving permits, *see Fiore v. Kelly Run Sanitation, Inc.*, 609 F. Supp. 909, 916 (W.D.Pa.1985), and licenses, *see Country Theatre Col, v. Paramount Film Distribution Corp.*, 146 F.Supp. 933 (E.D.Pa.1956). Neither of those cases are applicable here.

n.38 *See Grupo Gigante SA de CV v. Dallo & Co.*, 391 F.3d 1088 (9th Cir.2004); *Barcelona.com Inc. v. Ayuntamiento de Barcelona*, 330 F.3d 617 (4th Cir.2003); *International Café, S.A.L. v. Hard Rock Café Int'l, Inc.* 252 F.3d 1274 (11th Cir.2001); *Vanity Fair*

Mills, Inc. v. T. Eaton Co., 234 F.2d 633 (2d Cir.1956); *L'Aiglon Apparel, Inc. v. Lana Lobell, Inc.*, 214 F.2d 649 (3d Cir.1954).

n.39 Section 44(h) of the Lanham Act, *codified in*15 U.S.C. § 1126(b), provides, "Any person whose county of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to national of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the right to which any owner of a mark is otherwise entitled by this chapter."

n.40 A quasi-contract is an obligation that is implied-in-law. *Fred Ezra Co.*, 682 A.2d at 175.

n. 41 *See Ellsworth Associates v. U.S.*, 917 F.Supp. 841, 849 (D . D.C.1996)(noting the similarities between the elements of unjust enrichment for the District of Columbia, Maryland and Virginia).

n.42 In *Furash*, the Court held that interference with access to business constitutes an act of unfair competition. *Furash*, 130 F.Supp.2d at 57.

n.43 The footnote cites to W. Prosser, Handbook of the Law of Torts, 956-57 (4th ed.1971), which provides that the following may constitute unfair competition at common law: defamation, disparagement of a competitors goods or business methods, intimidation of customers or employees, interference with access to the

business, threats of groundless suits, commercial bribery, inducing employees to sabotage, and false advertising or deceptive packaging likely to mislead customers into believing in goods are those of a competitor.

Civil Action No. 04-332 (EGS)
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OCEANIC EXPLORATION CO., *et al.*,
Plaintiffs,

v.

CONOCOPHILLIPS, INC., *et al.*,)
Defendants.
)

ORDER

Upon consideration of ConocoPhillips' Motion for Reconsideration or, in the Alternative, Certification of Interlocutory Appeal, the opposition and reply thereto, and the statutory and case law governing the issues, it is by the Court hereby

ORDERED that ConocoPhillips' Motion for Reconsideration is **DENIED.** As explained in the Court's September 21, 2006 Memorandum Opinion and Order, plaintiffs have standing to bring this case because they have alleged a legally cognizable injury. Moreover, the act of state doctrine does not bar this Court from hearing plaintiffs' claims against ConocoPhillips; and it is

FURTHER ORDERED that ConocoPhillips' Motion for Certification of Interlocutory Appeal is **DENIED.** ConocoPhillips has failed to meet its high burden of demonstrating that this case involves a "controlling question of law as to which there is substantial ground

for difference of opinion" as required by 28 U.S.C. § 1292(b); and it is

FURTHER ORDERED that ConocoPhillips Motion to Stay Deadlines pending resolution of the Motion for Reconsideration or, in the Alternative, Certification of Interlocutory Appeal is **DENIED** as moot; and it is

FURTHER ORDERED that discovery is stayed pending resolution of ConocoPhillips' Motion to Transfer Venue.

Signed: Emmet G. Sullivan
United States District Court
November 17, 2006

Civil Action H-07-815
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Oceanic Exploration Company, *et al.*,

Plaintiffs,

versus

ConocoPhillips, et al.,

Defendants.

Final Judgment

Oceanic Exploration Company and Petrotimor Companhia de Petroleos, S.A.R.L. take nothing from the defendants, including:

ConocoPhillips (95-19) Pty. Ltd.,
ConocoPhillips (96-16) Pty. Ltd.,
ConocoPhillips (96-20) Pty. Ltd.,
ConocoPhillips Australia Pty. Ltd.,
ConocoPhillips Australia Gas H. Pty. Ltd.,
ConocoPhillips, Inc.,
ConocoPhillips JPDA Pty. Ltd.,
ConocoPhillips Pipeline Australia Pty. Ltd.,
Phillips International Investment, Inc.,
ConocoPhillips (00-21) Pty. Ltd.,
ConocoPhillips (91-12) Pty. Ltd.,
ConocoPhillips (91-13) Pty. Ltd.,
Phillips Petroleum (96-20), Inc.,
Phillips Petroleum Company Zoc,
Phillips Petroleum Company Indonesia,
Phillips Petroleum Company LNG Pty. Ltd.,

ConocoPhillips STL Pty. Ltd.,
ConocoPhillips Wa-248 Pty. Ltd.,
Pertamina (Persero),
Phillips Petroleum Prod. Indonesia, Inc.,
Phillips Petroleum Timor Sea Pty. Ltd.,
Phillips Petroleum Timor Sea, Inc.,
Phillips Indonesia, Inc.

- The Timor Sea Designated Authority for the Joint Petroleum Development Area,
- The Timor Gap Joint Authority for the Zone of Cooperation, and
- Badan Pelaksana Kegiatan Usaha Hulu Minyak Dan Gas Bumi (BP Migas).

Signed on April 22, 2008, at Houston, Texas.

Lynn N. Hughes
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OCEANIC EXPLORATION COMPANY, a Delaware corporation, 7800 East Dorado Place, Suite 250, Englewood, Colorado 80111; and PETROTIMOR COMPANHIA DE PETROLEOS, S.A.R.L., a corporation organized under the laws of Portugal, 7800 East Dorado Place, Suite 250, Englewood, Colorado 80111,

Plaintiffs,

v.

CONOCOPHILLIPS, a Delaware Corporation; CONOCOPHILLIPS COMPANY, a Delaware corporation; TOKYO TIMOR SEA RESOURCES INC., a Delaware corporation; PHILLIPS PETROLEUM COMPANY ZOC, a Delaware corporation; PHILLIPS PETROLEUM COMPANY INDONESIA, a Delaware corporation; PHILLIPS PETROLEUM (96-20), INC., a Delaware corporation; PHILLIPS PETROLEUM PRODUCTION INDONESIA, INC., a Delaware corporation; PHILLIPS INDONESIA, INC., a Delaware corporation; PHILLIPS INTERNATIONAL INVESTMENT, INC., a Delaware corporation, CONOCOPHILLIPS (03-21) PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS (03-12) PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS (03-13) PTY. LTD., an

Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS (03-19) PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS (03-16) PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS (03-20) PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS AUSTRALIA PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS AUSTRALIA GAS HOLDINGS PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS JPDA PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS PIPELINE AUSTRALIA PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS STL PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; CONOCOPHILLIPS WA-248 PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; DARWIN LNG PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; TOKYO TIMOR SEA PTY. LTD., an Australian private company organized under the laws of the Commonwealth of Australia; PHILLIPS PETROLEUM COMPANY ZOC PTY. LTD., an Australian private company organized under the laws

of the Commonwealth of Australia; TIMOR SEA DESIGNATED AUTHORITY FOR THE JOINT PETROLEUM DEVELOPMENT AREA, an unincorporated entity; and DOES 1 through 50, unknown persons or entities,

Defendants.

SECOND AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiffs Oceanic Exploration Company and Petrotimor Companhia de Petroleos, S.A.R.L. (collectively "Oceanic") bring this action to recover damages for the loss of the opportunity in the post-independence period for East Timor to compete or bid for rights to explore for and produce oil and natural gas from the seabed between East Timor and Australia. If the ConocoPhillips defendants had not bribed East Timor's Prime Minister, Mari Alkatiri, and others, then Oceanic would have had the opportunity to bid terms more favorable to East Timor and would have been awarded the right to explore for and extract oil and natural gas from the Timor Gap.

2. In 1974, Portugal, then sovereign of East Timor, awarded Oceanic a concession to explore for and produce oil and natural gas in the Timor Gap. Indonesia's invasion of East Timor the following year thwarted Oceanic's efforts to capitalize on the Portuguese concession. While the Indonesian army occupied East Timor, Indonesia and Australia created the commercial Joint Authority to develop, produce and market the oil and natural gas in the Timor Gap. The

Joint Authority entered into production sharing contracts with the ConocoPhillips defendants that gave them the rights to explore for and produce oil and natural gas in the Timor Gap. The ConocoPhillips defendants' secured these interests from the Joint Authority as a result of 30 years of corruption and bribery in Indonesia. The ConocoPhillips defendants' rights conflicted with the rights that Portugal had given to Oceanic.

3. Upon East Timor's independence, East Timorese political leaders, including Mari Alkatiri, were adamant that East Timor would not recognize any interests that had been awarded in the Timor Gap while Indonesia occupied East Timor, including the ConocoPhillips defendants' production sharing contracts.

4. A ConocoPhillips executive characterized as a "disaster of major proportions" the company's exposure to the loss of the production sharing contracts and related investment in the Timor Gap as a result of East Timor's independence. To avoid this perceived "disaster of major proportions," beginning in 2000, ConocoPhillips bribed, among others, Mari Alkatiri, the official responsible for East Timor natural resources and later the Prime Minister of East Timor. As a direct result of those bribes, Oceanic was given no opportunity to bid for exploration and production rights in the Timor Gap. As a direct result of those bribes, Mari Alkatiri reversed his position and influenced the Timor Sea Designated Authority, in 2003, to reinstate ConocoPhillips' production sharing contracts in the Timor Gap on terms more favorable to ConocoPhillips than those that applied when Indonesia occupied East Timor.

5. With East Timor's independence, Oceanic had positioned itself to compete for and bid for the exploration and production rights that would be awarded in the Timor Gap. Oceanic petitioned the interim United Nations mission and the East Timor government for exploration and production rights in the Timor Gap; advocated the construction of a natural gas pipeline from the Timor Gap to East Timor; advocated the construction of a liquid natural gas processing facility on the southern shore of East Timor (as opposed to the northern shore of Australia) and presented that option to representatives of the East Timor government; and, after obtaining the favorable opinion of recognized international seabed boundary legal experts, offered to finance a claim by East Timor in the International Court of Justice to support East Timor's expanded seabed boundary claims in its dispute with Australia and to establish expanded boundaries for East Timor. Such expanded seabed boundaries, under applicable international law, would have tripled East Timor's seabed hydrocarbon reserves.

6. ConocoPhillips' bribery of East Timorese officials deprived Oceanic of any opportunity to meaningfully compete for, or even to bid for, rights to explore for or produce oil and natural gas in the Timor Gap. Had Oceanic not been deprived of this opportunity, Oceanic would have been the successful bidder for rights to explore for and produce oil and natural gas in the Timor Gap.

II. JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1330, 1331, 1337, 1338; 18 U.S.C. §§

1964(c), 1956; 15 U.S.C. §§ 15, 1121 and supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(d), (f), 1400(a); 18 U.S.C. § 1965; and 15 U.S.C. § 15. The venue provision of the Foreign Sovereign Immunities Act provides that this District is the appropriate forum for actions against an agency or instrumentality of a foreign state when that entity cannot generally be reached elsewhere, a condition that exists for the Timor Sea Designated Authority. 28 U.S.C. § 1391(f)(4). The general venue statute permits a civil action that is not founded solely on diversity of citizenship to be brought "in a judicial district where any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b)(3). Defendants ConocoPhillips and ConocoPhillips Company may both be "found" in this District. Venue is also proper in this District because "[a]n alien may be sued in any district." 28 U.S.C. § 1391(d).

9. Defendant ConocoPhillips has a corporate office located at 1776 I Street, #700, Washington, D.C. Defendant ConocoPhillips Company has registered to do business in this District. In addition, James Godlove, a ConocoPhillips employee and a significant participant in the events that give rise to this action, resides in or near this District and works in the District. Because defendants ConocoPhillips and ConocoPhillips Company may be found here, venue for the RICO and antitrust claims is proper here. The Clayton Act permits an antitrust suit to be brought "in any district court of the United States in the district in which the

defendant resides or is found or has an agent . . . ." 15 U.S.C. § 15. The venue provision in the RICO statute similarly supports venue in this District. It provides that a RICO claim against a person "may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs." 18 U.S.C. § 1965(a). Once a RICO claim is asserted against one defendant under 18 U.S.C. § 1965(a), additional defendants residing in other districts may be brought before the same court where the "ends of justice require" such a result. 18 U.S.C. § 1965(b).

III. PARTIES

A. Plaintiffs

10. Plaintiff Oceanic Exploration Company ("Oceanic") is a corporation organized under the laws of the State of Delaware with a principal place of business in Englewood, Colorado.

11. Plaintiff Petrotimor Companhia de Petroleos, S.A.R.L ("Petrotimor") is a corporation organized under the laws of Portugal. Oceanic Exploration Company controls Petrotimor and owns at least 1,191 shares out of 1,200 outstanding shares of Petrotimor. As a formality, the Portuguese government required Oceanic to create Petrotimor as a Portuguese subsidiary to administer the concession it awarded to Oceanic in 1974. Oceanic and Petrotimor shall be referred to collectively as "Oceanic."

B. The ConocoPhillips Defendants

12. Defendant ConocoPhillips is a corporation organized under the laws of the State of Delaware with a principal place of business in Houston, Texas. ConocoPhillips is the successor in interest to both Phillips Petroleum Company and Conoco, Inc. The merger of the two companies took place in 2002. ConocoPhillips has a corporate office located at 1776 I Street N.W., #700, Washington, D.C. 20006. Among other things, ConocoPhillips has registered with the United States government a number of registered federal lobbyists operating out of that office, including James Godlove, a significant participant in the events that give rise to this action.

13. Defendant ConocoPhillips Company is a corporation organized under the laws of the State of Delaware. ConocoPhillips Company has registered to do business in the District of Columbia and has a registered agent for service of process in the District of Columbia.

14. Defendant Tokyo Timor Sea Resources, Inc., formerly known as Phillips Petroleum Timor Sea, Inc., is a corporation organized under the laws of the State of Delaware and registered to do business in the State of Delaware.

15. Defendant Phillips Petroleum Company ZOC is a corporation organized under the laws of the State of Delaware.

16. Defendant Phillips Petroleum Company Indonesia is a corporation organized under the laws of the State of Delaware and registered to do business in the State of Delaware.

17. Defendant Phillips Petroleum (96-20), Inc. is a corporation organized under the laws of the State of Delaware.

18. Defendant Phillips Petroleum Production Indonesia, Inc. is a corporation organized under the laws of the State of Delaware and registered to do business in the State of Delaware.

19. Defendant Phillips Indonesia, Inc. is a corporation organized under the laws of the State of Delaware and registered to do business in the State of Delaware.

20. Defendant Phillips International Investments, Inc. is a corporation organized under the laws of the State of Delaware and registered to do business in the State of Delaware.

21. Defendant ConocoPhillips (03-21) Pty. Ltd., formerly known as ConocoPhillips (00-21) Pty. Ltd., is an Australian private company organized under the laws of the Commonwealth of Australia.

22. Defendant ConocoPhillips (03-12) Pty. Ltd., formerly known as ConocoPhillips (91-12) Pty. Ltd., is an Australian private company organized under the laws of the Commonwealth of Australia.

23. Defendant ConocoPhillips (03-13) Pty. Ltd., formerly known as ConocoPhillips (91-13) Pty. Ltd., is an Australian private company organized under the laws of the Commonwealth of Australia.

24. Defendant ConocoPhillips (03-19) Pty. Ltd., formerly known as ConocoPhillips (95-19) Pty. Ltd., is

an Australian private company organized under the laws of the Commonwealth of Australia.

25. Defendant ConocoPhillips (03-16) Pty. Ltd., formerly known as ConocoPhillips (96-16) Pty. Ltd., is an Australian private company organized under the laws of the Commonwealth of Australia.

26. Defendant ConocoPhillips (03-20) Pty. Ltd., formerly known as ConocoPhillips (96-20) Pty. Ltd., is an Australian private company organized under the laws of the Commonwealth of Australia.

27. Defendant ConocoPhillips Australia Pty. Ltd. is an Australian private company organized under the laws of the Commonwealth of Australia. Its sole shareholder is Phillips Investment Company located in the Bahamas.

28. Defendant ConocoPhillips Australia Gas Holdings Pty. Ltd. is an Australian private company organized under the laws of the Commonwealth of Australia.

29. Defendant ConocoPhillips JPDA Pty. Ltd. is an Australian private company organized under the laws of the Commonwealth of Australia.

30. Defendant ConocoPhillips Pipeline Australia Pty. Ltd. is an Australian private company organized under the laws of the Commonwealth of Australia.

31. Defendant ConocoPhillips STL Pty. Ltd. is an Australian private company organized under the laws of the Commonwealth of Australia.

32. Defendant ConocoPhillips WA-248 Pty. Ltd. is an Australian private company organized under the laws of the Commonwealth of Australia.

33. Defendant Darwin LNG Pty. Ltd., formerly known as Phillips Petroleum LNG Pty. Ltd., is an Australian private company organized under the laws of the Commonwealth of Australia.

34. Defendant Tokyo Timor Sea Pty. Ltd., formerly known as Phillips Petroleum Timor Sea Pty. Ltd., is an Australian private company organized under the laws of the Commonwealth of Australia.

35. Defendant Phillips Petroleum Company ZOC Pty. Ltd. is an Australian private company organized under the laws of the Commonwealth of Australia.

36. Collectively, defendants ConocoPhillips; ConocoPhillips Company; Tokyo Timor Sea Resources, Inc.; Phillips Petroleum Company ZOC; Phillips Petroleum Company Indonesia; Phillips Petroleum (03-20), Inc.; Phillips Petroleum Production Indonesia, Inc.; Phillips Indonesia, Inc.; Phillips International Investment, Inc.; ConocoPhillips (03-21) Pty. Ltd.; ConocoPhillips (03-12) Pty. Ltd., ConocoPhillips (03-13) Pty. Ltd.; ConocoPhillips (03-19) Pty. Ltd.; ConocoPhillips (03-16) Pty. Ltd.; ConocoPhillips (03-20) Pty. Ltd.; ConocoPhillips Australia Pty. Ltd.; ConocoPhillips Australia Gas Holdings Pty. Ltd.; ConocoPhillips JPDA Pty. Ltd.; ConocoPhillips Pipeline Australia Pty. Ltd.; ConocoPhillips STL Pty. Ltd.; ConocoPhillips WA-248 Pty. Ltd.; Darwin LNG Pty. Ltd.; Tokyo Timor Sea Pty. Ltd.; and Phillips

Petroleum Company ZOC Pty. Ltd. shall be referred to as "ConocoPhillips" or the "ConocoPhillips defendants."

37. The ConocoPhillips defendants identified in paragraphs 14 through 35 are subsidiaries of defendants ConocoPhillips. ConocoPhillips and its subsidiaries are engaged directly and indirectly in the business of extracting, transporting, refining and selling oil and natural gas. ConocoPhillips and its subsidiaries directed, authorized, participated in or ratified the acts complained of herein by each ConocoPhillips defendant and were the agent and alter ego of each ConocoPhillips defendant in connection with said acts. There exists, and at all times herein there existed, identical or overlapping directorates, a unity of interest and ownership among and between defendant ConocoPhillips and its subsidiaries such that any distinction among entities has ceased, and each ConocoPhillips subsidiary is the alter ego of both ConocoPhillips and its other subsidiaries. Moreover, the ConocoPhillips defendants identified in paragraphs 14 through 35 all list "ConocoPhillips" as the "ultimate holding company" in their Australian Securities & Investments Commission filings. In these circumstances, adherence to the separate corporate existence of ConocoPhillips and each of its subsidiaries would promote injustice and fraud.

C. The ConocoPhillips Group

38. As used in this Complaint, the ConocoPhillips Group primarily includes defendants ConocoPhillips; ConocoPhillips Company; Tokyo Timor Sea Resources, Inc.; Phillips Petroleum Company ZOC; Phillips Petroleum Company Indonesia; Phillips Petroleum (03-

20), Inc.; Phillips Petroleum Production Indonesia, Inc.; Phillips Indonesia, Inc.; Phillips International Investment, Inc.; ConocoPhillips (03-21) Pty. Ltd.; ConocoPhillips (03-12) Pty. Ltd., ConocoPhillips (03-13) Pty. Ltd.; ConocoPhillips (03-19) Pty. Ltd.; ConocoPhillips (03-16) Pty. Ltd.; ConocoPhillips (03-20) Pty. Ltd.; ConocoPhillips Australia Pty. Ltd.; ConocoPhillips Australia Gas Holdings Pty. Ltd.; ConocoPhillips JPDA Pty. Ltd.; ConocoPhillips Pipeline Australia Pty. Ltd.; ConocoPhillips STL Pty. Ltd.; ConocoPhillips WA-248 Pty. Ltd.; Darwin LNG Pty. Ltd.; Tokyo Timor Sea Pty. Ltd.; and Phillips Petroleum Company ZOC Pty. Ltd.

39. The ConocoPhillips Group also includes a large number of officers, directors, employees and agents of ConocoPhillips or the other ConocoPhillips defendants, some of whom knew of the illegal conduct of the ConocoPhillips Group, including the conduct of and participation in the illegal enterprise; and some of whom carried out the ConocoPhillips Group's illegal activities under the supervision of others in the ConocoPhillips Group, including the conduct of and participation in the conduct of and participation in the illegal enterprise. These individuals include, but are not limited to, James Mulva, Stephen Brand, Karen Brand, James Godlove and Arthur Bennett.

D. The Designated Authority Group

40. Defendant Timor Sea Designated Authority ("Designated Authority") is a commercial unincorporated entity formed by East Timor and Australia. The Designated Authority has been and is currently engaged in the commercial development of oil

and natural gas in the Joint Petroleum Development Area between East Timor and Australia. The Designated Authority entered into commercial production sharing contracts with, among others, certain ConocoPhillips defendants. Those production sharing contracts provide that the contracting ConocoPhillips defendants would receive title to petroleum in exchange for complying with contractual obligations owed to the Designated Authority and making payments to the Designated Authority.

41. The Designated Authority Group also includes a large number of officers, directors, employees and agents of the Designated Authority, some of whom knew of the illegal conduct of the Designated Authority Group, including the conduct of and participation in the illegal enterprise; and some of whom carried out the Designated Authority Group's illegal activities under the supervision of others in the Designated Authority Group, including the conduct of and participation in the conduct of and participation in the illegal enterprise. These include, but are not limited to, Mari Alkatiri, titular head of the Designated Authority; Jose Teixeira, one of the two East Timorese joint commissioners of the Designated Authority; Ahmed Alkatiri and Rogerio Lobato.

E. Doe Defendants

42. Plaintiffs are unaware of the true names and capacities, whether individual, corporate, associate or otherwise, of defendant Does 1 through 50, and therefore sue these defendants by their fictitious names. Plaintiffs will seek leave to amend this

complaint when the identities of the Doe defendants are known.

43. Plaintiffs are informed and believe, and on that basis allege, that at all relevant times mentioned in this Complaint, defendants, and each of them, were acting in concert and active participation with each other in committing the wrongful acts alleged herein, and were the agents or alter egos of each other and were acting within the scope and authority of that agency and with the knowledge, consent and approval of one another.

F. Non-Defendant Co-Conspirators

44. Oceanic has not named the Timor Gap Joint Authority for the Zone of Cooperation ("Joint Authority"); PT Pertamina (Persero) ("Pertamina"); or Badan Pelaksana Kegiatan Usaha Hulu Minyak Dan Gas Bumi ("BPMIGAS") as defendants. Pertamina and the Joint Authority, however, are members of the RICO conspiracy alleged herein.

1. The Pertamina Group

45. PT Pertamina (Persero) ("Pertamina") is a company organized under the laws of the Republic of Indonesia with a principal place of business in Jakarta, Indonesia. At all relevant times, Pertamina shipped petroleum resources to the United States, maintained bank accounts in the United States, owned property in the United States, and maintained offices in the United States, including, but not limited to, offices in New York, New York; Houston, Texas and Los Angeles, California. As used in this Complaint, Pertamina shall be referred to as the Pertamina Group.

46. The Pertamina Group also includes others, some of whom knew of the illegal conduct of the Pertamina Group, including the conduct of and participation in the illegal enterprise; and some of whom carried out the Pertamina Group's illegal activities under the supervision of and direction of others in the Pertamina Group, including the conduct of and participation in the illegal enterprise. These include, but are not limited to, General Suharto, Bambang Trihatmodjo, Hutomo "Tommy" Mandala Putra, P.T. McDermott International, Mohammed "Bob" Hasan, Suyitno Padmosukismo and Tabrani Ismail.

2. The Joint Authority Group

47. Before East Timor gained its independence and before the formation of the Designated Authority, Australia and Indonesia formed the Timor Gap Joint Authority ("Joint Authority") as a commercial entity to engage in the marketing and production of oil and natural gas in the Timor Gap. The Joint Authority entered into commercial production sharing contracts with, among others, certain of the ConocoPhillips defendants. Those production sharing contracts provide that the contracting ConocoPhillips defendants would receive title to petroleum in exchange for services provided and payments made to the Joint Authority.

48. The Joint Authority Group also includes a large number of officers, directors, employees and agents of the Joint Authority, some of whom knew of the illegal conduct of the Joint Authority Group, including the conduct of and participation in the illegal enterprise; and some of whom carried out the Joint Authority Group's illegal activities under the supervision of others

in the Joint Authority Group, including the conduct of and participation in the illegal enterprise.

IV. BACKGROUND

A. The Timor Gap

49. The Timor Gap is an area of the Timor Sea between East Timor and Australia in which no agreed seabed boundary exists. On May 17, 1971, Australia and Indonesia signed the Australian-Indonesian Continental Shelf Agreement that delineated the maritime border between Australia and Indonesia on both sides of East Timor. Because Portugal was the internationally recognized sovereign of East Timor at the time, that agreement did not establish a maritime border between East Timor and Australia. Therefore, the boundary line in the Timor Sea between Australia and Indonesia was not continuous. This break in the boundary line between East Timor and Australia came to be known as the "Timor Gap." A map depicting the Timor Gap is attached as Exhibit A.

50. The Timor Gap holds significant natural gas and oil reserves, including the Bayu-Undan natural gas field; the Elang, Kakatua and Kakatua North oil fields; and approximately twenty percent (20%) of the Greater Sunrise natural gas field. Current estimates are that the area holds proven reserves of over five trillion cubic feet of natural gas and 500 million barrels of oil, natural gas liquids and condensate. At current prices, the value of the known reserves exceeds US$50 billion.

B. Oceanic Exploration Company

51. Oceanic is an established oil and gas exploration company with a history of successful exploration. Beginning in the late sixties, Oceanic began acquiring concessions in unexplored areas of the world that had been overlooked by other companies. For example, in 1969, Oceanic entered into a concession agreement with the Greek government to explore for hydrocarbons offshore Greece in the North Aegean Sea. The Oceanic-led consortium, consisting of Wintershall A.G., Whiteshield Oil Company and Hellenic Oil Company, discovered the Prinos Oil Field and Kavala Gas Field, which provided Greece with its first significant hydrocarbon production. Subsequently, Oceanic was granted a concession offshore Sabah, Malaysia and teamed with British Petroleum Company and Chinese Petroleum Company to discover oil in that concession area. Oceanic also formed a consortium that obtained a license for Block 16/13a in the British North Sea. Oceanic teamed with Britoil and Deminex and discovered natural gas and condensate on this Block. Oceanic has also engaged in exploration in Thailand, Cameroon, and Nicaragua, Peru, Panama and Ghana. Oceanic in conjunction with partners, Shell International Exploration and Eni S.P.A., participates with Chinese Petroleum Corporation in a concession offshore Taiwan in the East China Sea. Approximately 10,000 km of seismic exploration has been done in this area, but exploration drilling has not yet occurred. Oceanic has also provided geologic consulting services for various government entities, such as a geologic study of the Chaco Basin, provided to the government of Bolivia, and a geologic study for the Nicaraguan government in conjunction with the Norwegian Petroleum Directorate.

III. COMMON ALLEGATIONS

A. Oceanic's Activities in the Timor Sea

52. For centuries, Portugal was the internationally recognized sovereign over East Timor and remained so until the inhabitants voted their independence in 1999. In 1968, Oceanic applied to the Portuguese government for the concession in an area off the southern coast of East Timor to explore for petroleum and petroleum equivalents. Between 1969 and 1974, Oceanic undertook extensive research of East Timor seabed geology, including gathering seismic information and preparing detailed prospect maps in preparation for exploratory drilling in the Timor Sea.

53. On August 2, 1972, the Portuguese Ministry of Overseas granted a provisional concession to Oceanic so that work could proceed. As a formality, the Portuguese government required Oceanic to create Petrotimor, a Portuguese subsidiary to administer the concession. The by-laws for Petrotimor were completed on April 8, 1972 and submitted to the Portuguese Ministry of Overseas for final approval. At all relevant times, all parties recognized that Oceanic was the real party in interest to the Portuguese concession.

54. On January 31, 1974, Portugal issued Decree No. 25-74, Article 1, which authorized the Portuguese Ministry of Overseas to grant the concession to Oceanic. The concession was signed on December 11, 1974. It awarded Oceanic the exclusive rights to explore for and extract any oil, natural gas or other hydrocarbon products in a 14.8 million acre area off the southern shore of East Timor in the Timor Gap.

55. On July 1, 1975, Jaime Fernandes Dos Santos established a Petrotimor office in Dili, the capital of Portuguese Timor, located at 10 Mousinho de Albuquerque Street, Dili, East Timor. Dos Santos opened a bank account for Petrotimor with Banco Nationale Ultramarino in or about August 1975.

56. Until the Petrotimor office could be made secure, Oceanic stored in the office of Timor Oil its geographical and seismic data of the Timor Sea and other confidential and proprietary information gained from its exploration activities. Given the confidential and proprietary nature of this exploration data, access to that data was restricted.

B. Indonesian Invasion of East Timor

57. On December 7, 1975, the Indonesian military forces launched a full scale invasion of East Timor and moved into Dili, the capital. During the ensuing Indonesian occupation of East Timor, more than 200,000 East Timorese were killed, more than one-third of the population of East Timor. During the first week of the invasion, the offices of Timor Oil were targeted and ransacked by the Indonesian Army. Members of the Indonesian military removed, under threat of violence and death, the highly proprietary and confidential data that Oceanic collected during its exploration in the Timor Sea, including maps that identified the location of the later discovered Bayu-Undan gas field. None of Oceanic's confidential and proprietary information was ever recovered by Oceanic.

58. On July 17, 1976, General Suharto, the then President of Indonesia, signed a bill declaring East

Timor to be the 27th Province of Indonesia. The United Nations refused to recognize this incorporation and took the position consistently for twenty-five years that Portugal remained the administrating power.

C. ConocoPhillips' Corruption in Indonesia

59. ConocoPhillips has a long history of corrupt activities in Indonesia. ConocoPhillips' Director of Contracts and Acquisitions for Indonesia, Arthur Bennett, from the mid-1960's to mid-1970's, actively engaged in paying bribes to Indonesian officials, including officials of the state-run oil company, to secure ConocoPhillips' foothold in Indonesia.

60. The establishment of Pertamina as a state-run oil company in Indonesia regularized the corrupt payments made by ConocoPhillips. Pertamina required that ConocoPhillips utilize certain specified Indonesian contractors owned by Suharto, his family members and other Suharto cronies. One of the required subcontractors was P.T. McDermott Indonesia, which was a joint venture between McDermott International and Mohammed "Bob" Hasan. McDermott provided the resources and expertise, while Hasan handled interface with the Indonesian government and Pertamina. If oil companies were to receive approval for projects, they needed to use P.T. McDermott in those projects. Hasan typically would receive a 20% agent fee for his efforts. That fee was then paid to the Suharto family. ConocoPhillips regularly used P.T. McDermott in Indonesia. The company knew that the "agent fee" was a device used to bribe Suharto.

61. In the mid-1980's, officials of Pertamina established a shell corporation known as Rainbow, operating out of Los Angeles, California. ConocoPhillips, seeking to secure production sharing contracts, entered into "joint ventures" with Rainbow during every tender process for production sharing contracts. Upon a successful award, ConocoPhillips then "bought out" Rainbow's interest in the "joint venture." ConocoPhillips' payment to Rainbow for its interest in the "joint venture" was nothing more than a bribe paid to Pertamina officials for the award of new production sharing contracts. The "bribe" was channeled through the Pertamina officials, through Pertamina, to Suharto and his cronies.

62. Rainbow registered with the California Secretary of State, but it never established a physical office. It represented to the California Secretary of State that its business address was on Sunset Boulevard in Los Angeles, California. In truth, that business address was nothing more than a post office box in a commercial mail box store. Rainbow existed solely as a device to channel bribes or kickbacks to Pertamina officials, Pertamina and Suharto. This scheme operated throughout the period of 1985 through 1995.

63. ConocoPhillips also participated in Indonesian corruption through the use of a complex tax scheme that allowed ConocoPhillips fraudulently to understate its U.S. taxes. The device to perpetrate this scheme was the production sharing contracts between Indonesia and ConocoPhillips. Under these agreements, ConocoPhillips received a portion of the oil it actually extracted. Pertamina received another portion, with a further portion then going to Pertamina for sale for the benefit of Indonesia. By agreement, each party treated

the barrels of oil as being sold at a pre-established price well above actual market price.

64. By treating its portion of the oil as being sold for an above market price, ConocoPhillips overstated its revenues. Indonesia imposed and ConocoPhillips paid taxes on those overstated revenues. Indonesia recognized that ConocoPhillips was overpaying taxes. To bring that overpayment into balance, Pertamina granted ConocoPhillips a right to extract and sell additional oil in an amount equivalent to the amount of taxes that ConocoPhillips overpaid to Indonesia—a refund in kind.

65. ConocoPhillips reported on its consolidated United States corporate income tax returns the initial foreign tax amount assessed by Indonesia. ConocoPhillips did not reflect the refund oil on its tax returns, even though that refund was recognized by all parties to be a refund of taxes paid to adjust for the ghost "sale" of oil at the pre-set, artificial, and above market price.

66. The Internal Revenue Code allows corporations to credit against United States taxes certain taxes paid abroad—the foreign tax credit. Because foreign taxes operate as a credit against payment of U.S. federal taxes, ConocoPhillips' failure to account for the refund of oil meant that each year it overstated the amount of its foreign tax credit. By overstating its foreign tax credit for each year, ConocoPhillips' grossly understated its federal tax obligation to the United States.

67. ConocoPhillips knew that it was receiving oil that was not subject to Indonesian taxes for each tax year.

ConocoPhillips knew that it was receiving this oil for the sole purpose of offsetting the taxes overpaid to Indonesia due to the sale of oil at artificial, pre-set, above-market prices. ConocoPhillips knowingly did not reduce the amount that it claimed to have paid in Indonesia taxes.

68. Through this scheme and artifice to defraud, ConocoPhillips defrauded the United States of taxes properly due and owing for all tax years since at least 1975, perhaps earlier, through tax year 1999. Through this scheme and artifice to defraud, ConocoPhillips avoided and evaded United States taxes that would have been properly due and owing for all these tax years.

69. ConocoPhillips uses a calendar year as its tax year. On or about the September 15th following the close of each tax year, ConocoPhillips mailed or caused to be mailed to the Internal Revenue Service Center in Austin, Texas, a United States corporate income tax return (Form 1120). Both Schedule J of Form 1120 and the associated Form 1118 contained false and fraudulent overstatements of ConocoPhillips' claimed foreign tax credit. Each Form 1120 and associated schedules that ConocoPhillips mailed to the Internal Revenue Service Center materially and falsely overstated the amount of foreign tax credit that ConocoPhillips claimed in a cumulative amount of millions of dollars.

70. ConocoPhillips' failure to accurately report the foreign tax credit and the resulting overstatement of that credit on its United States corporate income tax returns and associated schedules with the concomitant

underpayment of taxes further enriched both Indonesia and ConocoPhillips for the benefit of sustaining its operations in Indonesia. This underpayment of U.S. taxes, fraudulently secreted from the U.S. government in the reporting of Indonesia-related operations by ConocoPhillips, defrauded the United States of millions of dollars in taxes that otherwise would have been payable and provided financial resources for ConocoPhillips to continue to pay off corrupt Indonesian officials.

D. As a Result of ConocoPhillips' Corruption in Indonesia, ConocoPhillips Gained Favored Status with the Joint Authority

71. As a result of ConocoPhillips' long history of corrupt activities in Indonesia, set forth in the preceding section, ConocoPhillips ultimately secured a favored position when Pertamina officials who worked for the Joint Authority began to participate in the award of production sharing contracts to ConocoPhillips in the Timor Sea.

72. On December 11, 1989, Indonesia and Australia agreed to commercially exploit the oil and natural gas in the Timor Gap by agreeing to a Zone of Cooperation in the area between East Timor and Northern Australia. Area A of Zone of Cooperation substantially corresponded to the concession area that Portugal had granted to Oceanic, as shown in the attached Exhibit B.

73. Indonesia and Australia created a commercial entity, the Joint Authority, to produce, market and sell the oil and natural gas in the Zone of Cooperation. The Joint Authority established its head office in Jakarta,

with an operating office in Darwin, Australia. The Indonesian representatives to the Joint Authority were Pertamina officials.

74. The Joint Authority was responsible for the "activities relating to exploration for and exploitation of the petroleum resources in Area A [of the Zone of Cooperation]" and had the stated goal to "achieve the optimum commercial utilization of the petroleum resources of Area A . . . ." Consistent with that goal, the Joint Authority had the right to "market any or all petroleum production." The Joint Authority was responsible for marketing, selling and disposing of its portion of the oil and natural gas produced in the Joint Petroleum Development Area.

75. The Joint Authority would enter production sharing contracts between itself and a private petroleum companies. The production sharing contracts, distinguished from natural resources licences which simply provide a fee to the government, involve the actual involvement of the awarding entities in the exploitation and marketing of resources. The Joint Authority, like the other parties to these production sharing contracts, shared the risk and potential benefit of these joint ventures. The production sharing contracts "provide for the contractor to take a share of petroleum production as payment from the Joint Authority for the petroleum operations." The Joint Authority was responsible for supervision of the oil exploration activities, termination of the production sharing contracts, collection and distribution of any proceeds from petroleum production, and preparation of annual income and expenditure financial estimates.

76. The Joint Authority had independent legal status with the ability "to contract, to acquire and [sic] dispose of moveable and immovable property and to institute and be party to legal proceedings."

77. In 1991, the Joint Authority released for tender 14 contract areas in Zone A of the Zone of Cooperation. Those companies holding concessions in the Zone of Cooperation that Australian states had previously granted were given preferential treatment. They had the right to meet any bid offered for Blocks 91-03, 91-04, 91-10 and 91-12. No preferential treatment was given to other former concession holders, including Oceanic.

78. Bidding actually was opened on June 24, 1991 with the close of applications for permits on October 7, 1991. Tenders were evaluated by the financial commitment to be undertaken by the bidding company in exploring for potential hydrocarbon resources in the geographical block subject to the bid. The most significant participant in the bid for Block 91-13 was ConocoPhillips. ConocoPhillips bid an extraordinarily high amount in comparison with other offerors to secure Block 91-13, despite the fact that ConocoPhillips had done no exploration in this area.

79. ConocoPhillips' success in identifying what ultimately proved to be a very large reserve of hydrocarbons in the Timor Gap--a confidence reflected in its high tender price to secure those rights--resulted from Pertamina having provided to ConocoPhillips the survey and geological data previously prepared by Plaintiffs and stolen by the Indonesian military from Timor Oil's office in Dili in 1975. This data identified

accurately the locations ultimately exploited as the well sites for the largest hydrocarbon fields in the Zone of Cooperation. ConocoPhillips, as a result of having this stolen data, was able to successfully identify the well locations in the Block for which it had been awarded concessions. ConocoPhillips, unlike Oceanic, had no prior experience or interest in any area of the Timor Sea prior to 1991.

80. Oceanic did not submit a bid for Block 91-13 or any other Block released at that time. On February 22, 1991, Portugal, the country that had granted Oceanic the concession in the Timor Gap, had initiated an action in the International Court of Justice that challenged the Indonesian invasion and Australia's and Indonesia's establishment of the Joint Authority as a commercial entity to develop oil and natural gas in the Timor Gap. Oceanic did not bid at that time because that act would have been inconsistent with and conflicted with the then pending effort of Portugal to resolve the dispute in Oceanic's favor before the International Court of Justice. On June 20, 1995, the International Court of Justice held, by a 14 to 2 vote, that it could not reach the merits of Portugal's claim because Indonesia, like Australia later, would not submit to the jurisdiction of that court. In addition, the Joint Authority tendering the Blocks for bid was an entity of questionable legitimacy, created solely as a result of Indonesia's invasion of East Timor. Holding legitimate rights from Portugal, Oceanic had no reason call into question its own rights by bidding for rights that it already. Oceanic had no reason to bid for rights that the Joint Authority had no authority to tender and possibly confer legitimacy on a questionable—and since discredited--entity.

81. In addition, Oceanic did not bid at that time because, unlike the Australian oil companies that held Australian-awarded concessions in the Zone of Cooperation, the Joint Authority denied Oceanic's requested for preferential status as a prior interest holder in the area, despite Oceanic's long history and involvement in the area.

82. The Bayu-Undan natural gas field falls within Blocks 91-12 and 91-13. ConocoPhillips estimated that the gross hydrocarbon recovery potential from the Bayu-Undan gas field in Blocks 91-12 and 91-13 to be 400 million barrels of petroleum liquids and 3.4 trillion cubic feet of natural gas. In connection with the commercial development of the Bayu-Undan gas field, ConocoPhillips continued its affiliation with P.T. McDermott, a company with a history of corrupt affiliation with Indonesia's General Suharto. ConocoPhillips contracted with P.T. McDermott for a significant portion of the platform that ConocoPhillips would use to produce the natural gas and gas condensate from the Bayu-Undan gas field.

E. East Timor Gains Its Independence and Vitiates All Prior Interests in the Timor Sea

83. The East Timorese people voted overwhelmingly in favor of independence in a vote conducted on August 30, 1999. Pursuant to the transfer of administrative authority to the United Nations under an agreement with Portugal, the United Nations Security Council, on October 25, 1999, established a United Nations Transitional Administration in East Timor ("UNTAET") with a mandate to maintain law and order and to facilitate humanitarian assistance. At that time,

Portugal transferred its internationally recognized role as administrator for East Timor to UNTAET.

84. The leadership of East Timor was adamant that all interests previously granted in the Timor Sea were invalid, including all prior production sharing contracts that the Joint Authority had awarded. Mari Alkatiri, the leader of the largest East Timorese political party, and ultimately Prime Minister for East Timor, stated that his party "would not legitimatize a treaty between a thief and the receiver of stolen goods," referring to the Timor Gap Treaty between Indonesia and Australia that permitted their joint commercial exploration of the oil and natural gas in the Timor Sea. Alkatiri later stated that "we still consider the Timor Gap Treaty an illegal treaty. This is a point of principle. We are not going to be a successor to an illegal treaty." As such, ConocoPhillips interests in the Timor Gap would have been vitiated.

85. On November 16, 1999, Jose Ramos Horta, spokesman for the United Nations provisional administration, and later the Deputy Prime Minister of East Timor, spoke out against ConocoPhillips specifically. He was furious that ConocoPhillips had made payments to Indonesia of approximately US$3 million for oil extracted from the Timor Gap after the independence elections. Ramos Horta stated:

I think it's outrageous. At a minimum, they [ConocoPhillips] had an obligation to seize all revenue from oil production after the ballot. They did not have any authority to make such payments. Notwithstanding their claim of a treaty, they contracted with Indonesia in disregard of the illegality of the treaty.

86. In response to East Timor's new independence, James Godlove, ConocoPhillips' Darwin Area Manager said "under the current terms of the treaty and our contracts, if by the end of 2001 we do not have a declaration of commercial discovery and an approved development plan . . . we run the risk of losing all of the investments we have made and our rights to develop this field. This would be a disaster of major proportions."

87. As an interim measure, UNTAET and Australia signed an Exchange of Notes on February 10, 2000, which temporarily continued the terms of the Timor Gap Treaty and allowed East Timor to begin receiving revenue until newly independent East Timor definitively could decide how to proceed with respect to the oil and natural gas in the Timor Gap.

88. East Timor later adopted a Constitution that vitiated all prior interests, including those of ConocoPhillips, in East Timorese natural resources. The resources of the soil, the subsoil, the territorial waters, the continental shelf and the exclusive economic zone, which are essential to the economy, shall be owned by the State and must be used in a just and equitable manner in accordance with national interests. (Constitution of the Democratic Republic of East Timor, art. 139, para. 1).

The Democratic Republic of East Timor shall not recognize any acts or contracts concerning the natural resources referred to in number 1 of Article 139 entered into or undertaken prior to the entry into force of the Constitution which are not confirmed by the

competent organs after the Constitution enters into force.

(Constitution of the Democratic Republic of East Timor, art. 158, para. 3). The East Timor Constitution thus vitiated all prior exploration, production or property interests in the Timor Gap, including the ConocoPhillips defendants' interest in all production sharing contracts.

F. ConocoPhillips Bribes East Timor's Prime Minister Mari Alkatiri

89. To avoid this "disaster of major proportions" – the loss of ConocoPhillips' investment in the Timor Gap – ConocoPhillips conducted a campaign of making cash payments and payments in kind to and for the benefit of Mari Alkatiri and other East Timor officials, in an amount over US$2.5 million. The significance of these payments can best be understood by comparing them to Mr. Alkatiri's current US$450 monthly salary as the Prime Minister.

90. These cash payments were in U.S. dollars transferred as a result of travel between Australia, the United States and East Timor by Godlove, Brand and even James Mulva, the Chief Executive Officer of ConocoPhillips. ConocoPhillips made these payments to influence Mari Alkatiri and to induce him to use his influence to ensure that East Timor would reinstate the production sharing contracts that ConocoPhillips previously held and to ensure that Oceanic would not be awarded production sharing contracts in the Timor Gap.

91. Since August 30, 1999, Mari Alkatiri, regardless of the title he may have held with either UNTAET or the East Timor government, had direct responsibility for all natural resources in East Timor, including oil and natural gas in the Timor Gap. He was able to influence the determination of whether any company would be allowed to bid for the proven oil and natural gas reserves in the Timor Gap. He was able to influence the determination of whether the Designated Authority would award production sharing contracts, or allow competition for production sharing contracts, by companies other than those that previously held rights granted while Indonesia occupied East Timor, most significantly the ConocoPhillips defendants. ConocoPhillips recognized Alkatiri's significant influence over the East Timor natural resources, including the oil and natural gas in the Timor Gap, and dealt with him almost exclusively on this issue from August 30, 1999.

92. From August 30, 1999, until he was named Prime Minister of East Timor on April 14, 2002 , Mari Alkatiri was the Chief Economic Affairs Minister for UNTAET. As Prime Minister, Alkatiri was concurrently the Minister for Development of the Environment. In addition, Alkatiri serves as the titular head of the Timor Sea Designated Authority. Jose Teixeira, a known accomplice of Alkatiri, is one of the two East Timor joint commissioners of the Designated Authority.

93. ConocoPhillips' 2000 Annual Report stated that the company had "donated 13 trucks for agricultural use," purportedly "to help the new nation of East Timor." The 2000 Annual Report pictured Stephen Brand,

"Australasia division president" presenting an additional vehicle--to be used as "a mobile medical clinic"--to three nuns. In facts, the "trucks" were Toyota SUVs intended to become personal vehicles for the senior political leadership in East Timor. These SUVs have been so used; they can be seen nightly parked in the driveways of government officials, including the Alkatiri residence. Senior ConocoPhillips management not only intended that these SUVs be a bribe to curry favorable treatment for the company, but also have actually witnessed in trips to East Timor that the vehicles in no way are actually "for agricultural use." Subsequently, ConocoPhillips has "contributed" a number of other vehicles for the personal benefit of officials in East Timor.

94. Ahmed Alkatiri is Mari Alkatiri's brother. During this time and thereafter, Mari Alkatiri sometimes used Ahmed to collect bribes made by foreign companies, including ConocoPhillips, to secure favorable treatment. Beginning in January 2001, Ahmed Alkatiri received $74,000 in U.S. funds that were then paid into bank accounts in Australia. Those accounts are with the Australia and New Zealand Bank ("ANZ Bank") facility, one of which is Account Number 0164955606-24866. Another account used for this purpose at the same bank, but in the name of Mari Alkatiri, is Account Number 0159015376-18038. Some of the cash was deposited at the ANZ branch at 247 Trower Road, Monterey House, Casuarina. This money was paid by ConocoPhillips in its effort to solidify approval by Mari Alkatiri, on behalf of East Timor, of the prior production sharing contracts that had been secured from the Joint Authority in the Timor Gap.

95. As a direct result of the illegal payments ConocoPhillips made to and for the benefit of Mari Alkatiri, he no longer condemned ConocoPhillips' production sharing contracts that ConocoPhillips was awarded during the Indonesian occupation of East Timor. To the contrary, on July 5, 2001, Mari Alkatiri, then the East Timorese Cabinet Member for Economic Affairs for the UNTAET, signed a Memorandum of Understanding with Australia. In that document, Alkatiri agreed that upon East Timor's independence, an arrangement similar to the one that existed between Australia and Indonesia would govern joint exploitation of the Joint Petroleum Development Area (previously Area A of the Zone of Cooperation under the Timor Gap Treaty). The Joint Petroleum Development Area, like Area A of the Zone of Cooperation, overlapped the area of Oceanic's concession from Portugal, as shown in Exhibit B.

96. In the summer of 2001, Mari Alkatiri sought to impose on ConocoPhillips a tax rate in excess of the tax rate that Indonesia had imposed upon ConocoPhillips. ConocoPhillips took the position that if East Timor continued to insist on its higher tax rates, then the development project in the Timor Gap would be discontinued and there would be, as a result, no revenues to benefit East Timor in the near term. The company further stated that there would be no further investment by ConocoPhillips until the terms and conditions of the prior arrangement with Indonesia were restored. Thereafter, Mulva flew to Dili to meet with Mari Alkatiri. He traveled with Stephen Brand and James Godlove on a ConocoPhillips aircraft, Registration No. N663P, arriving in Dili on August 24, 2001.

97. Mulva's trip to Dili to attempt to secure the same tax arrangements as previously had been in place with Indonesia took place just before the elections in East Timor. Mulva met with Alkatiri, who at the time was designated as the Chief Timorese negotiator by both UNTAET and the provisional East Timorese government. Alkatiri told Mulva in those meetings to wait until after the elections to further discuss the issue.

98. After the elections, repeated discussions between ConocoPhillips and Alkatiri took place. For example, on October 12, 2001 ConocoPhillips officials flew to Dili from Perth on a ConocoPhillips aircraft, Registration No. N663P, later returning to Darwin. Finally, on December 21, 2001 Brand, President of Phillips Petroleum (91-12) Pty. Ltd., now known as ConocoPhillips (03-12) Pty. Ltd., speaking on behalf of ConocoPhillips and its subsidiaries and co-ventures in the Bayu-Undan field, stated that the East Timor Counsel of Ministers, which was controlled by Mari Alkatiri, had decided to endorse the Understanding on Tax and Fiscal Package that solidified the tax rates that ConocoPhillips previously had in place with Indonesia.

99. At the end of October, Mari Alkatiri and Ahmed Alkatiri, on his brother's behalf, received approximately $44,000 in U.S. funds which ultimately were paid into bank accounts in Australia at the ANZ Bank in Casuarina. These payments were made by ConocoPhillips to influence the decision by East Timor to reduce its tax rates.

100. On April 14, 2002, Mari Alkatiri was designated the Prime Minister. Mulva, originating his travel in the United States on a ConocoPhillips aircraft, Registration No. N663P, visited Dili, departing on April 17, 2002, in the company of Billy Parker, Stephen Brand and Blair Murphy, with a destination of Sydney, Australia. East Timor planned to have its "independence day" the next month. ConocoPhillips paid to Alkatiri US$500,000 purportedly for the celebrations. The payment has never been accounted for to the East Timor public and was not spent on the celebrations.

101. Mulva, ConocoPhillips CEO, traveled to Dili and attended the celebrations. Originating his travel in the United States on a ConocoPhillips aircraft, Registration No. N667P, Mulva arrived in Dili on May 19, 2002, in the company of Blair Murphy, Stephen Brand and Billy Parker. Prior to the arrival in Dili, the aircraft stopped in Darwin, Australia. Mulva arranged to have over $2 million in U.S. funds paid to Mari Alkatiri during Mulva's trip as a bribe for Alkatiri's participation in ensuring that ConocoPhillips maintained its interests in the Timor Sea on the same terms as it had previously secured from Australia and Indonesia. This US$2 million cash payment was then ferried in various amounts to Australia and placed in a bank account in the name of Ahmed Alkatiri, for the benefit of Mari Alkatiri. Between May and December, 2002, Alkatiri and members of his family and cohorts made over 80 trips from Dili to Darwin for this purpose. The resulting cash was deposited at the Wespac Bank at 7 Bradshaw Terrace, Casuarina. In transactions with the Westpac Bank, Ahmed--in an effort to cover-up his actions--used at least four different names: Ahmad

Alkatiri, Ahmad Bin Hamud Alkatiri, Ahmed Alkatiri and Ahmade Hamute Alkatiri.

102. On June 15, 2002, Rogerio Lobato–an Alkatiri bagman–was stopped at the Darwin airport by Australian customs authorities with approximately $1 million in United States currency in a suitcase. Because of his assertion of diplomatic immunity, he was allowed to proceed into Australia, but a report of suspicious financial activity was generated by the Australian officials. This money ended up in Alkatiri's bank accounts in Australia.

103. In addition, in the period between May and July, 2002, additional monies were given to Ahmed and Mari Alkatiri by ConocoPhillips in an amount approximating A$138,000. These funds, as well, were ultimately transported to Australia for placement in the separate ANZ bank accounts.

104. December 31, 2002 was seen as the deadline for Australia to approve the Timor Sea Treaty between Australia and East Timor covering the Timor Gap area, now denominated as the Joint Petroleum Development Area. Although the Timor Sea Treaty had earlier been signed by East Timor and Australia on May 21, 2002, that treaty required parliamentary approval by both countries. The International Unitization Agreement was necessary as a separate agreement between the two countries because the Greater Sunrise gas field straddled the eastern border of the Joint Petroleum Development Area and is thus partially outside the boundaries covered by the Timor Sea Treaty. The Timor Sea Treaty, signed by the heads of state in May

2002, contemplated that the International Unitization Agreement would be finalized by December 31, 2002.

105. In December 2002, ConocoPhillips applied further pressure to get the Timor Sea Treaty ratified. It took the position that it could not proceed with the Darwin liquid natural gas plant until such time as the ratification process was complete. ConocoPhillips insisted that a liquid natural gas plant could not be constructed in East Timor because an undersea pipeline to such a plant from the Bayu-Undan gas field was not "technically feasible." ConocoPhillips' knew that its statement was false. In 1996, ConocoPhillips engaged a pipeline engineering consultant, JP Kenney Company, to study the feasibility of a pipeline to East Timor. A report prepared by JP Kenney Company and provided to ConocoPhillips concluded that an undersea pipeline from the Bayu-Undan gas field to East Timor was technically feasible. In addition, the report concluded that because the distance to East Timor was half of the distance to Australia, an undersea pipeline to East Timor was likely to be less expensive.

106. The East Timor Parliament ratified the Timor Sea Treaty on December 17, 2002, but without agreement on the International Unitization Agreement that covered the Sunrise oil fields. ConocoPhillips's Murphy stated at the time that East Timor would receive US$3 billion from the Bayu-Undan oil field over the next 17 years.

107. At about this same time, Alkatiri, through his brother Ahmed, received approximately $54,000 in U.S. funds from ConocoPhillips to secure his approval and participation in the treaty ratification. These funds

were ultimately deposited in ANZ Bank accounts in the name of Mari and Ahmed Alkatiri.

108. Thereafter, ConocoPhillips imposed a deadline of March 11, 2003 by which it must have ratification of the Timor Sea Treaty in order to go forward with the construction of a liquid natural gas facility in Darwin. The Timor Sea Treaty formally came into effect on April 1, 2003, with the exchange of notes between Australia and East Timor.

109. One day later, the Designated Authority was formed to commercially exploit the oil and natural gas in the Timor Gap. The Designated Authority entered into production sharing contracts that same day. Six of those seven production sharing contracts were with ConocoPhillips defendants or to consortia in which ConocoPhillips defendants held significant interests. The Designated Authority, like the other parties to these production sharing contracts, shared the risk and potential benefit of these joint ventures. The Designated Authority was responsible for marketing, selling and disposing of its portion of the oil and natural gas produced in the Joint Petroleum Development Area. The Designated Authority, like the commercial actor that it is, reserved the right to engage in, and did engage in downstream activities, *i.e.*, the disposition of the oil or natural gas after extraction from the seabed, including marketing, sale, purchase and transportation of the oil and natural gas. A significant portion of the Designated Authority's oil and natural gas was imported into the United States.

110. Shortly after the Timor Sea Treaty ratification on April 1, 2003, Mulva, in a trip originating out of the

United States, traveled to Dili to meet with Alkatiri in the second week of April, 2003. He flew with William Berry and Blair Murphy on a ConocoPhillips aircraft, Registration No. N667P, departing Dili on April 14, 2003 for Darwin, Australia. At or around the same time, Alkatiri introduced before the East Timorese Parliament legislation that would reduce the income tax rates that would be applied to the Bayu-Undan gas field, in other words the legislation would reduce the income tax rates of primarily ConocoPhillips. Notwithstanding Alkatiri's earlier insistence that much higher tax rates should apply to ConocoPhillips, the legislation that Alkatiri proposed reduced the rate below the rate that Indonesia had imposed on ConocoPhillips. The East Timor Parliament approved the tax legislation on June 5, 2003 and confirmed the reduced income tax rate would apply for at least 20 years. This reduction in the income tax rate applied to ConocoPhillips does not benefit the East Timorese people. To the contrary, it reduced the amount of taxes that East Timor's largest taxpayer would have to pay. It deprived the people of East Timor of money that could have been used to improve the health or education of its people or to develop a basic modern infrastructure. Alkatiri provided no economic justification why the poorest country in Asia would reduce the amount of taxes that its largest taxpayer would have to pay. Alkatiri reduced the income tax rate that ConocoPhillips would pay as a result of the improper payments that made to him by ConocoPhillips.

111. ConocoPhillips then announced on June 15, 2003, that the Designated Authority had approved its gas development plan for Bayu-Undan. ConocoPhillips

stated that it would then proceed with the US$1.5 billion development that included a pipeline from the Bayu-Undan gas field to Darwin, Australia, and the construction of a liquified natural gas plant in Darwin. Production of gas condensate began in 2004.

G. Oceanic's Efforts to Obtain New Interests in the Timor Sea or New Recognition of its Prior Interests

112. Having been thwarted in its efforts to capitalize on the concession that Portugal had granted it, Oceanic consistently sought to compete for and to bid for the rights to explore for and produce oil and natural gas in the Timor Gap.

113. With the formation of the Joint Authority in 1989, Oceanic continued to press for rights to explore for and produce oil and natural gas in the Timor Gap. Oceanic inquired of and attempted to meet with not only representatives of the Joint Authority, but with representatives of Pertamina and Australia. Oceanic's efforts were unsuccessful.

114. Shortly after the UNTAET became the transitional governing authority in newly independent East Timor in 1999, Oceanic attempted to meet with the responsible parties, including the members of the governing authority and individuals in East Timor's provisional parliament. In addition to seeking recognition of the concession granted by Portugal, this time Oceanic also attempted, in the alternative, to pursue significant new business opportunities and to seek from UNTAET, as the provisional governing authority, rights to explore for and produce oil and natural gas in the Timor Sea in areas not covered by

the Portuguese concession, but which would fall within East Timor international boundaries under international law and would triple East Timor's seabed resource base.

115. On June 6, 2001, an Oceanic representative contacted Sergio Vieria de Mello, Special Representative of the Secretary General for East Timor and Head of the Mission (UNTAET) to set up a meeting with Oceanic representatives. de Mello, upon the instruction of Alkatiri, refused to meet with the Oceanic representatives.

116. On June 21, 2001, Oceanic representatives were able to meet briefly with Mari Alkatiri, who was then the UNTAET Chief Economic Affairs Minister, and two advisors. As a result of that meeting, one of Alkatiri's advisors arranged a meeting for the following day with certain members of the UNTAET Cabinet. At the meeting with certain members of the UNTAET Cabinet, two Oceanic representatives were permitted only ten minutes to discuss Oceanic's efforts to obtain rights to explore for and produce oil and natural gas in the Timor Gap and the viability of a natural gas pipeline from the Bayu-Undan gas field to East Timor. The only member of the UNTAET Cabinet who responded to Oceanic's discussion was Mari Alkatiri, who was furious that Oceanic did not limit its presentation to the viability of a natural gas pipeline, but discussed potential exploration and production rights in the Timor Gap, as part of the company's alternative approaches.

117. All subsequent efforts by Oceanic representatives to meet with Alkatiri over the following months were met with rejection.

118. In early October 2001, Oceanic and Petrotimor delivered to UNTAET a new formal request for a concession in the Timor Gap. The request was for oil and natural gas exploration and production rights within the expanded lateral boundaries of East Timor in the Timor Gap. The request proposed, and provided economic justification for, a liquid natural gas facility in East Timor. Oceanic and Petrotimor representatives hand delivered the documents to all members of the UNTAET government, including Mari Alkatiri, then the Chief Minister and Minister of Economy and Development. The Oceanic and Petrotimor representatives attempted to meet with Alkatiri, who was the official responsible for natural resources, to discuss the request. Alkatiri accepted the document in the reception area to his office, but quickly entered and shut the door to his office and refused to speak with or listen to the representatives.

119. Shortly after Oceanic had delivered its formal request, Alkatiri asked Sergio Vieira de Mello, Head of the UNTAET Mission, to issue an edict prohibiting any UNTAET employee from speaking with Oceanic's representatives. de Mello acceded to Alkatiri's request. On October 10, 2001, de Mello issued a memorandum acknowledging Alkatiri's request, stating that Alkatiri was the only UNTAET official with authority to deal with Oceanic and requiring that "[b]y this memorandum, I wish to instruct all UNTAET personnel to have no contacts with these representatives [of Oceanic] or their associates."

120. In early March 2002, representatives of Oceanic and Petrotimor visited East Timor. These representatives met with officials of the East Timorese government. Oceanic had invested significantly in research and analysis of the legal viability of a claim that could be brought on behalf of East Timor in the International Court of Justice to establish a permanent seabed boundary in the Timor Gap between East Timor and Australia. Respected scholars on international boundaries rendered opinions on the issue on Oceanic's behalf. During that time in East Timor, Oceanic provided these opinions to the East Timorese officials, including Mari Alkatiri, and offered to fund litigation in the International Court of Justice on behalf of East Timor so that East Timor could pursue the entirety of its legitimate rights under international law to the natural resources in the Timor Sea. These expanded boundaries, to which East Timor is entitled, would have tripled the amount of oil and natural gas within the sovereignty of East Timor. In exchange for funding litigation in the International Court of Justice to establish these expanded rights, Petrotimor and Oceanic asked the East Timorese government to grant it a revenue interest in the currently producing fields that would come within East Timorese sovereignty. Oceanic received no response to this request. Within days after Oceanic and Petrotimor made this offer, Australia, without public fanfare, withdrew from the jurisdiction of the International Court of Justice as to all disputes pertaining to delimitation of maritime zones.

121. On March 23-24, 2002, representatives of Oceanic and Petrotimor sponsored a conference in Dili, East Timor that addressed East Timor's maritime

boundaries and pipeline activities. Oceanic had invited to the conference East Timor's cabinet members and all members of East Timor's parliament (many of whom attended), the leaders of all political parties, the general public, and the press. The conference consisted of three presentations: a presentation on East Timor's justifiable maritime boundaries according to international law; a presentation on the economic impact of East Timor claiming these justifiable boundaries; and a presentation advocating the construction of a gas pipeline from the Bayu Undan and Greater Sunrise gas fields to East Timor instead of Darwin, Australia, thereby enabling East Timor to benefit from a domestic liquid natural gas plant and, as a result, to provide billions of dollars of investment in East Timor infrastructure and jobs for unemployed East Timorese citizens. Oceanic later hand delivered materials from the conference to Alkatiri, his cabinet members, and those members of parliament who could not attend. Oceanic sent these materials to both the official and personal electronic mail addresses of Alkatiri and his cabinet members, and those members of parliament with electronic mail addresses.

122. In August 2002, Oceanic representatives again visited Dili, East Timor and attempted to meet with Prime Minister Alkatiri. Alkatiri refused to meet with the Oceanic representatives.

123. With United Nations assistance, Oceanic representatives were able to make a short presentation regarding how Oceanic could assist East Timor to gain recognition of its legitimate boundaries in the Timor Sea to Mari Alkatiri and Niny Borges at the United Nations Building in New York, New York on

September 27, 2002. Alkatiri appeared to listen, but never acknowledged Oceanic's request for recognition of or broadening of rights to explore for and produce the oil and natural gas in the Timor Sea. The meeting produced no results.

124. An Oceanic representative attended an oil industry conference in Darwin, Australia in June 2003. Jose Teixeria, one of two East Timorese joint commissioners of the Designated Authority, informed the Oceanic representative that the Designated Authority would not recognize Oceanic's prior concession and that the Designated Authority would not consider any Oceanic bids for production sharing contracts in the Joint Petroleum Development Area because doing so would be an "action that might annoy the Sunrise Field Group." ConocoPhillips owns a significant portion of the referenced Sunrise Field Group.

125. Oceanic had no opportunity to bid for any production sharing contracts from the Designated Authority. On April 2, 2003, the Designated Authority, under Alkatiri's influence, awarded seven production sharing contracts in the Joint Petroleum Development Area. The production sharing contracts were awarded to those companies to which the Joint Authority had previously granted production sharing contracts. The Designated Authority awarded these production sharing contracts without any formal acreage release or public bidding process.

126. Six of the seven production sharing contracts awarded by the Designated Authority were awarded to the ConocoPhillips defendants or to groups in which the ConocoPhillips defendants held a significant interest.

Those entities include: ConocoPhillips (91-12) Pty Ltd.; ConocoPhillips (91-13) Pty Ltd.; ConocoPhillips JPDA Pty Ltd.; ConocoPhillips Petroleum Timor Sea Pty Ltd.; ConocoPhillips (96-16) Pty Ltd.; ConocoPhillips (95-19) Pty Ltd.; ConocoPhillips (96-20) Pty Ltd.; and ConocoPhillips (00-21) Pty Ltd.

127. Alkatiri allowed these production sharing contracts to be awarded without competition or considering the best interests of the East Timorese people, which would have been served by an undersea pipeline from the Bayu-Undan gas field to East Timor and a liquid natural gas facility in East Timor, not Australia, as Oceanic consistently proposed. Alkatiri did not consider either a pipeline from the Bayu-Undan gas field to East Timor or a domestic East Timorese liquid natural gas facility as a condition of awarding the production sharing contracts to the ConocoPhillips defendants. Rather, he was "persuaded" to adopt and did adopt the false ConocoPhillips position that a pipeline to East Timor from the Bayu-Undan gas field was not technically feasible.

IV. DEFENDANTS' CONTACTS WITH THE UNITED STATES

128. Phillips Petroleum ("Phillips"), a predecessor to ConocoPhillips itself, the Joint Authority, and the Designated Authority have, since October 2001, imported to the United States millions of barrels of oil that they derived from the Elang-Kakatua oil field in the Timor Sea:

DATE BARRELS IMPORTED PLACE OF IMPORT

October, 2001	650,000	Martinez, California
November, 2001	618,000	San Francisco, California
December, 2001	678,000	San Francisco, California
January, 2002	650,000	Seattle, Washington
April, 2002	648,000	San Francisco, California
May, 2002	657,000	Seattle, Washington
June, 2002	569,000	Martinez, California
June, 2002	49,000	Seattle, Washington
July, 2002	682,000	Martinez, California
August, 2002	63,000	Martinez, California
September, 2002	1,300,000	Martinez, California
October, 2002	652,000	Martinez, California
November, 2002	641,000	Martinez, California
December, 2002	636,000	Martinez, California
January, 2003	622,000	Martinez, California
February, 2003	650,000	Martinez, California
March, 2003	631,000	Martinez, California
April, 2003	367,000	Eureka, California
May, 2003	616,000	Martinez, California
June, 2003	657,000	Martinez, California
July, 2003	725,000	Martinez, California
August, 2003	410,000	Eureka, California
August, 2003	251,000	Martinez, California
January, 2004	623,000	Martinez, California
May, 2004	591,000	Martinez, California
August, 2004	655,000	Martinez, California
October, 2004	589,000	Martinez, California
November, 2004	622,000	Martinez, California
December, 2004	1,380,000	Martinez, California

129. The oil belonging to the Joint Authority extracted from the Elang-Kakatua oil fields in the Zone of

Cooperation in the Timor Gap was, with full knowledge and approval of the Joint Authority, imported into the United States where it was sold for the commercial benefit of the Joint Authority.

130. The oil belonging to the Designated Authority extracted from the Elang-Kakatua oil fields in the Zone of Cooperation in the Timor Gap was, with full knowledge and approval of the Designated Authority, imported into the United States where it was sold for the commercial benefit of the Designated Authority.

131. The Joint Authority established a banking relationship with Chase Manhattan Bank in New York, New York. Chase Manhattan is insured by the Federal Deposit Insurance Corporation. The Joint Authority maintained and controlled both depository and flowthrough accounts with Chase Manhattan Bank in New York. It is through these accounts that the Joint Authority conducted its financial transactions, namely the regular and continuous receipt of revenues for the commercial exploitation of oil, including revenues from the sale of its own portion of oil and natural gas. The Joint Authority directed those entities that owe money to the Joint Authority for activities in the Zone of Cooperation of the Timor Gap, including ConocoPhillips, to deposit or to transfer by wire such funds to its Chase Manhattan Bank accounts.

132. Employees of and agents of the Joint Authority spoke with representatives of the Chase Manhattan Bank in the United States by telephone and conveyed information to representatives of the Chase Manhattan Bank by facsimile or wire transmissions. Employees and agents of the Joint Authority also had telephone

and facsimile communications with employees or agents of members of the ConocoPhillips Group in the United States. These communications were used to effectuate the acts of bribery, corruption and conspiracy alleged herein.

133. Once the production of oil from the Elang-Kakatua fields began, the Joint Authority instructed ConocoPhillips, to deposit the proceeds from the sale of the Joint Authority's portion of the oil produced from the Elang-Kakatua fields in that Chase Manhattan Bank account. ConocoPhillips regularly so deposited the sale proceeds. Those transactions, which have been documented in the Joint Authority's annual reports, constitute transactions that involve the use of a financial institution engaged in activities that affect interstate or foreign commerce in any way or degree.

134. The Joint Authority in February 1999 described the sharing mechanism between the operators and the countries for revenues received from extracted oil in the Elang-Kakatua field:

The first receipt of revenue from the sale of petroleum from the Elang-Kakatua-Kakatua North field was received on 5 October 1998. These revenues are received into a special fund bank account held with the Chase Manhattan Bank in New York, where interest is earned under an enhanced automatic investment program. The petroleum revenues and interest are shared equally between the Contracting States and transferred to the accounts nominated by the Contracting States on the 15th of each month.

135. The Designated Authority is a customer of Chase Manhattan Bank in New York, New York. The Designated Authority maintains and controls both depository and flowthrough accounts with Chase Manhattan Bank in New York. The Designated Authority directs firms that owe money to it for activities in the Joint Petroleum Development Area of the Timor Gap, including ConocoPhillips, to deposit or transfer by wire such funds to its Chase Manhattan Bank accounts. These communications were used to effectuate the acts of bribery, corruption and conspiracy alleged herein.

136. Employees and agents of the Designated Authority spoke with representatives of the Chase Manhattan Bank in the United States by telephone and conveyed information to the Chase Manhattan Bank by facsimile or wire transmission. Employees and agents of the Joint Authority also had telephone and facsimile communications with employees or agents of members of the ConocoPhillips Group who are located in the United States.

137. ConocoPhillips deposits the proceeds of its sale of oil from the Elang-Kakatua fields in an as yet unidentified domestic financial institution that is insured by the Federal Deposit Insurance Corporation. ConocoPhillips transfers or causes to be transferred by wire from accounts in the financial institution holding its deposits to the Joint Authority's and/or Designated Authority's accounts at Chase Manhattan Bank in New York, New York.

138. ConocoPhillips' deposits in the Joint Authority's account in Chase Manhattan Bank and subsequently in

the Designated Authority's account in Chase Manhattan Bank were made with the intent to promote specified unlawful activity. If ConocoPhillips did not make those payments to the Joint Authority and subsequently to the Designated Authority for the first tranche oil, then the Joint Authority and subsequently the Designated Authority would terminate the respective production sharing contracts and preclude ConocoPhillips from taking and selling any more of the oil (and later natural gas) from the Timor Sea.

139. On a monthly basis, the Joint Authority and subsequently the Designated Authority distributed the funds deposited in their bank accounts at Chase Manhattan Bank in New York to the bank accounts nominated by each of the Contracting States.

140. The Joint Authority's and Designated Authority's deposits in the bank accounts designated by the Contracting States were made with intent to promote specified unlawful activity. By making payments to the Contracting States, the Joint Authority and Designated Authority ensured that the Contracting States would continue to reap financial benefits from ConocoPhillips' exportation of oil (and later natural gas), that the Contracting States would continue to recognize ConocoPhillips' production sharing contracts, and that ConocoPhillips would continue exporting oil (and later natural gas) from the Timor Sea.

141. Both the oil (and later extracted natural gas) and the revenue generated from the sale of those products from the Timor Sea constitute proceeds of specified unlawful activity. Specified unlawful activity includes, but is not limited to, the predicate acts and other claims

including: murder, robbery, extortion, destruction of property by means of explosive or fire, a crime of violence, fraud, or any scheme to defraud, bribery of a public official, interstate and foreign travel to aid racketeering, an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States.

142. The financial transactions engaged in by ConocoPhillips and the Designated Authority that result from the sale of the oil were and are made with the intent to promote specified unlawful activity because only by getting money for the oil do ConocoPhillips and the Designated Authority realize the benefit from the oil and natural gas and the specified unlawful activity.

143. ConocoPhillips and the Designated Authority knew, at the time that they participated in or attempted to participate in the foregoing financial transactions that the funds at issue represented the proceeds of some form of an activity that constituted a felony under state, federal, or foreign law.

144. In addition to the foregoing transactions being made and continuing to be made with the intent to promote specified unlawful activity, the foregoing transactions were made with the intent to evade taxes or commit tax fraud; with the intent to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the specified unlawful activity; and/or with the intent to avoid a transaction reporting requirement under state

or federal law.

V. DEFENDANTS' CONCEALMENT OF INHERENTLY SECRET WRONGFUL ACTS AND PLAINTIFFS' DISCOVERY OF SUCH ACTS

145. The acts of bribery, corruption and wrongdoing as specified in this Complaint, and which resulted in the exclusion of Oceanic from the opportunity to compete and bid for the rights to explore for and produce oil and natural gas in the Timor Gap, were inherently secret acts not known to the world, and which defendants and each of them made concerted efforts to conceal from the public, shareholders and Plaintiffs each and every act of tortious or criminal conduct alleged herein.

146. As a result of defendants' concealment of said acts of bribery, corruption and wrongdoing, plaintiffs lacked sufficient knowledge of facts, and did not have reason to have such knowledge of facts, such as would allow plaintiffs to determine that defendants had engaged in wrongful acts that had injured plaintiffs and constituted a sufficient legal basis for plaintiffs to assert civil causes of action, as now set forth herein, against defendants and each of them.

147. In 2002, East Timor adopted a constitution that vitiated all pre-existing interests in the Timor Sea. The subsequent act of recognition of ConocoPhillips' production sharing contracts in the Timor Sea, to the exclusion of Oceanic, was contrary to the prior public statements Mari Alkatiri and other East Timor officials, who had previously made clear that they would not recognize the production sharing contracts awarded

while Indonesia unlawfully occupied East Timor. In short, Alkatiri, for his part, had described those production sharing contracts as the proceeds of "theft."

148. As a result, in 2003, plaintiffs commenced an investigation to determine whether this abrupt reversal of position by East Timorese officials was the result of any wrongful conduct by defendants or others who had significant financial interests in the Timor Gap. Oceanic's investigation revealed information regarding the acts of bribery and other criminal and tortious conduct engaged in by defendants after East Timor's independence. Those acts are set forth at length at paragraphs 89-111.

149. As a result of Oceanic's discovery of the information regarding defendant ConocoPhillips' acts of bribery, and the corruption of the officials of East Timor who accepted and acted thereon in denying Oceanic any opportunity to compete for or bid for the rights to explore for or produce oil or natural gas from the Timor Sea, plaintiffs conducted further investigation into the conduct of ConocoPhillips.

150. Of course, Oceanic could not have known of ConocoPhillips' corrupt acts before they took place in 2001, 2002 and 2003.

FIRST CLAIM
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT
(18 U.S.C. §§ 1962(c) and 1964(c))
(Against All Defendants)

151. Plaintiffs reallege and incorporate by reference each and every allegation in Paragraphs 1 through 150.

152. During all relevant times and continuing through the filing of this Complaint, conspirators were persons and were associated-in-fact with an enterprise engaging in, and the activities of which affect, interstate and foreign commerce. This enterprise is made up of the ConocoPhillips Group, the Joint Authority Group, the Designated Authority Group, and Pertamina Group (collectively the "Conspirators")

153. The Conspirators and each of them, for the purpose of executing and attempting to execute the scheme to improperly prevent Plaintiffs from competing fairly with ConocoPhillips and preventing Plaintiffs from obtaining rights to explore for and produce oil and natural gas in the Timor Gap, by means of tortious, fraudulent and criminal conduct, did and do unlawfully, willfully and knowingly conduct and participate, directly and indirectly, in the conduct of said enterprise's affairs through a pattern of racketeering activity. Their actions include multiple, related acts in violation of: (1) Interstate and Foreign Travel to Aid Racketeering, 18 U.S.C. § 1952; (2) Money Laundering, 18 U.S.C. § 1956; and (3) Engaging in Monetary Transactions in Proceeds from Specified Unlawful Activities, 18 U.S.C. § 1957.

154. The enterprise as described herein is at all relevant times a continuing enterprise because, it was designed to and did unlawfully prohibit and prevent Plaintiffs from fairly competing with ConocoPhillips and prevent Plaintiffs from obtaining rights to explore for oil and natural gas in the Timor Gap. The conduct of

the enterprise continues through the date of this Complaint and is ongoing by virtue of Conspirators' continued exploitation of and importing into the United States hydocarbons from under the Timor Sea, all to the detriment of Plaintiffs.

155. The pattern of racketeering activity, as defined by 18 U.S.C. §§ 1961(1) and (5), presents both a history of criminal conduct and a distinct threat of continuing criminal activity. Such activity consists of multiple acts of racketeering by each Conspirator herein, is interrelated, not isolated and is perpetrated for the same or similar purposes by the same persons. Such activity extends over a substantial period of time, up to and beyond the date of this Complaint. Such activities occurred after the effective date of 18 U.S.C. §§ 1961 et seq., and the last such act occurred within 10 years after the commission of a prior act of racketeering activity. These racketeering activities included repeated acts of:

(a) Interstate and Foreign Travel in Aid of Racketeering Enterprises: On or about the dates indicated in the paragraphs incorporated below, the defendant Conspirators and their employees and/or agents acting on their behalf, aided and abetted by each other, and the remaining Conspirators, traveled in interstate or foreign commerce or used the mail or any facility in interstate or foreign commerce, with intent to do so thereafter distributed or attempted to distribute the proceeds of any unlawful activity, committed or attempted to commit any crime of violence to further any unlawful activity; or promoted, managed, established, carried on, or facilitated the promotion, management, establishment, or carrying on, of any

unlawful activity or attempted to do so. Said unlawful activity included, but was not limited to, extortion and/or bribery in violation of the laws of the United States, including but not limited to violations of the Foreign Corrupt Practices Act, 15 U.S.C. §§78dd-1 to -3, and violations of 18 U.S.C. § 1952 and 18 U.S.C. § 2, as described in Paragraphs 1, 4-6, 59-71, 89-90, 93-103 and 106-111 of this Complaint.

(b) Money Laundering--Transaction: On or about the dates indicated in the paragraphs incorporated below, the defendant Conspirators, aided and abetted by each other, and the remaining Conspirators, with knowledge that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct a financial transaction that, in fact, involved or would have involved the proceeds of specified unlawful activity. The defendant Conspirators did so with the intent to promote or to attempt to promote the carrying on of specified unlawful activity; with intent to engage or to attempt to engage in conduct constituting tax fraud or tax evasion; or knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction reporting requirement under state or federal law. Such actions are in violation of 18 U.S.C. § 1956 and 18 U.S.C. § 2, as described in Paragraphs 1, 4-6, 59-71, 89-90, 93-103, 106-111, and 128-144 of this Complaint.

(c) Money Laundering - Transportation: On or about the dates indicated in the paragraphs incorporated below, the defendant Conspirators, aided and abetted

by each other, and the remaining Conspirators, transported, transmitted, transferred or attempted to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States with the intent to promote or to attempt to promote the carrying on of specified unlawful activity; or knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer or attempted transportation, transmission or transfer represented the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction reporting requirement under state or federal law. Such actions are in violation of 18 U.S.C. § 1956 and 18 U.S.C. § 2, as described in Paragraphs 1, 4-6, 59-71, 89-90, 93-103, 106-111 and 128-144 of this Complaint.

(d) Monetary Transactions in Proceeds from Specified Unlawful Activities: On or about the dates indicated in the paragraphs incorporated below, the defendant Conspirators, aided and abetted by each other, and the remaining Conspirators, knowingly engaged or attempted to engage in a monetary transaction in criminally derived property of a value greater than $10,000, which property was or would have been derived from specified unlawful activity. The defendant Conspirators committed or attempted to commit that offense both in the United States (or in any special maritime and territorial jurisdiction of the United States) and with respect to those defendants that are

United States persons outside the United States (or any special jurisdiction). Such actions are in violation of 18 U.S.C. § 1957 and 18 U.S.C. § 2, as described in Paragraphs 1, 4-6, 59-71, 89-90, 93-103, 106-111 and 128-144 of this Complaint.

156. The persons alleged herein to have violated 18 U.S.C. § 1962(c) are separate from, though employed by or associated with, the ConocoPhillips Group, the Joint Authority, the Designated Authority Group, and the Pertamina Group.

157. Each Conspirator had a role in the racketeering activity that was distinct from the undertaking of those acting on its behalf. Each Conspirator also attempted to benefit, and did benefit, from the activity of their employees and agents alleged herein, and thus were not passive victims of racketeering activity, but active perpetrators.

158. Plaintiffs, and each of them, have been injured in their business or property as a direct and proximate result of the defendant Conspirators' violations of 18 U.S.C. § 1962(c), including injury by reason of the predicate acts constituting the pattern of racketeering activity.

159. Oceanic and Petrotimor have been injured, at a minimum, in their valuable business and property by the actions of the defendant Conspirators in unlawfully preventing and interfering with their ability to compete fairly for the ability to extract hydrocarbons from the Timor Sea and preventing and interfering with their ability to secure production sharing contracts to

explore for and produce oil and natural gas in the Timor Sea.

160. As a result of the violations of 18 U.S.C. § 1962(c) by members of the ConocoPhillips Group and the Designated Authority Group, plaintiffs have suffered substantial damages in an amount to be proved at trial.

161. Pursuant to 18 U.S.C. § 1964(c), plaintiffs are entitled to recover treble their general and special compensatory damages, plus interest, costs and attorneys, fees, incurred by reason of defendants' violations of 18 U.S.C. § 1962(c).

SECOND CLAIM CONSPIRACY TO VIOLATE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT
(18 U.S.C. §§ 1962(d) and 1964(c))
(Against All Defendants)

162. Plaintiffs reallege and incorporate by reference each and every allegation in Paragraphs 1 through 161 as if fully set forth herein.

163. During all relevant times and continuing through the time of filing this Complaint, Conspirators willfully, knowingly and unlawfully, did conspire, combine, confederate and agree together, and with various other persons whose names are both known and unknown, to violate 18 U.S.C. § 1962(c).

164. These Conspirators were and are associated-in-fact with an enterprise engaged in, and the activities of which affect, interstate and foreign commerce. Specifically, the ConocoPhillips Group, the Joint

Authority Group, the Designated Authority Group, and the Pertamina Group, constituting a group of entities associated-in-fact, did unlawfully, willfully and knowingly participate in and conduct, directly and indirectly, said enterprise's affairs through a pattern of racketeering activity.

165. The pattern of racketeering activity, as defined by 13 U.S.C. §§ 1961(1) and (5) included: (a) Acts of Interstate and Foreign Travel to Aid Racketeering, 18 U.S.C. § 1952 as described in Paragraphs 1, 4-6, 59-71, 89-90, 93-103 and 106-111 of the Complaint; (b) Acts of Money Laundering, 18 U.S.C. § 1956, as described in Paragraphs 1, 4-6, 59-71, 89-90, 93-103, 106-111 and 128-144 of the Complaint; (c) Acts of Engaging in Monetary Transactions in Proceeds from Specified Unlawful Activities, 18 U.S.C. § 1957, as described in Paragraphs 1, 4-6, 59-71, 89-90, 93-103, 106-111 and 128-144 of the Complaint.

166. Conspirators, and each of them, conspired and schemed to improperly prevent and interfere with Plaintiffs' opportunity to compete for the ability to extract and sell oil and natural gas from under the Timor Sea by means of tortious, fraudulent and criminal conduct, as more fully set forth in paragraphs 1, 4-6, 59-71, 89-90, 93-103, 106-111 and 128-144.

167. In furtherance of this unlawful conspiracy, and to effect its objectives, Conspirators committed numerous overt acts, including but not limited to those set forth in paragraphs 1, 4-6, 59-71, 89-90, 93-103, 106-111, and 128-144.

168. Oceanic and Petrotimor have been injured in their business or property by reasons of defendants' violations of 18 U.S.C. § 1962(d), including injury by reason of the predicate acts constituting the pattern of racketeering injury.

169. As a result of the conspiracies between and among all Conspirators to violate 18 U.S.C. § 1962(c), plaintiffs have suffered substantial damages, in an amount to be proved at trial.

170. Pursuant to 18 U.S.C. § 1964(c), plaintiffs are entitled to recover treble their general and special compensatory damages, plus interest, costs and attorneys' fees, by reason of Conspirators' violation of 18 U.S.C. § 1962(d).

THIRD CLAIM
VIOLATION OF THE ROBINSON-PATMAN ACT
15 U.S.C. §§ 13(c), 15
(Against the ConocoPhillips Defendants)

171. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 170 above, as though set forth at length herein.

172. The ConocoPhillips defendants are engaged in the business of exploring for and extracting oil and natural gas. Oceanic and Petrotimor are also engaged in the business of exploring for and extracting oil and natural gas.

173. The ConocoPhillips defendants are engaged in commerce. In the course of commerce the

ConocoPhillips defendants provided items of value as a commission, brokerage, or other compensation to East Timor, the Designated Authority and/or Mari Alkatiri or their respective agents, representatives or other intermediaries in connection with the sale or purchase of goods, wares or merchandise. At the time of such transaction, the person receiving the value was or was subject to the direct or indirect control of East Timor, the Designated Authority and/or Mari Alkatiri.

174. The ConocoPhillips defendants did not provide these items of value to East Timor, the Designated Authority and/or Mari Alkatiri or their respective agents, representatives or other intermediaries for services rendered in connection with the sale or purchase of goods, wares, or merchandise. Rather, ConocoPhillips provided these items of value to gain a competitive advantage over Plaintiffs. As a result of the ConocoPhillips defendants' improper conduct, Plaintiffs had no meaningful opportunity to obtain production sharing contracts with the named entities or even to meaningfully communicate with them in pursuit of such contracts. By reason of the ConocoPhillips defendants' improper conduct, Plaintiffs were deprived of any opportunity to fairly compete and bid for the opportunity to explore for and produce oil and natural gas from below the Timor Sea.

175. As a result of the ConocoPhillips defendants' improper conduct, Plaintiffs are entitled to recover treble the damages they suffered in an amount to be proven at trial.

FOURTH CLAIM
VIOLATION OF THE LANHAM ACT

(15 U.S.C. § 1126)
(Against All Defendants)

176. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 175 above, as though set forth at length herein.

177. Australia, Indonesia, Portugal and the United States are each signatories to the Paris Convention for the Protection of Industrial Property (the "Paris Convention").

178. Plaintiff Petrotimor is a national of Portugal. Plaintiff Oceanic is a national of the United States.

179. The Paris Convention affords protection to nationals of signatory states against acts of unfair competition, including acts of competition contrary to honest practices in industrial and commercial matters.

180. Defendants engaged in acts of competition contrary to honest practices in industrial and commercial matters, including engaging in fraudulent conduct and committing multiple acts of conspiracy within the United States. Each of these acts violates the Paris Convention's prohibitions against unfair competition.

181. Under 15 U.S.C. § 1126(h), plaintiff Petrotimor is entitled to bring suit against defendants, and invoke the remedies of the Lanham Act, for defendants' violations of the Paris Convention.

182. Under 15 U.S.C. § 1126(i), plaintiff Oceanic is entitled to bring suit against defendants, and invoke the remedies of the Lanham Act, for defendants' violations of the Paris Convention.

183. As a result of defendants' acts of unfair competition in violation of the Paris Convention, defendants have been unjustly enriched and plaintiffs have sustained losses and plaintiffs have been compelled to file suit.

184. Defendants' conduct was malicious, willful, fraudulent and deliberate.

185. Pursuant to 15 U.S.C. § 1126(h) and 15 U.S.C. § 1117, plaintiffs are entitled to recover all damages sustained as a result of defendants' unfair competition, including (1) defendants' profits, (2) plaintiffs' losses, (3) the costs of suit, and (4) reasonable attorneys' fees.

FIFTH CLAIM
INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
(Against the ConocoPhillips Defendants)

186. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 185 above, as though set forth at length herein.

187. Plaintiffs had, during the time period covered in this Complaint a valid business expectancy between Plaintiffs, on the one hand, and the Designated Authority and/or East Timor, on the other hand, relating to the award of production sharing contracts relating to the oil and natural gas under the Timor Sea.

188. The ConocoPhillips defendants and each of them, knew of the existence of a valid business expectancy between Plaintiffs, on the one hand, and the Designated Authority and/or East Timor, on the other hand relating to the award of production sharing contracts relating to the oil and natural gas under the Timor Sea.

189. The ConocoPhillips defendants, and each of them, intentionally interfered with Plaintiffs' valid business expectancies relating to the award of production sharing contracts relating to the oil and natural gas under the Timor Sea.

190. As a direct and proximate result of the ConocoPhillips defendants' intentional interference with those expectancies, which resulted, among other things, in Plaintiffs' denial of the opportunity to bid for oil exploration rights that Plaintiffs would have been otherwise awarded, Plaintiffs suffered damages in an amount to be proven at trial.

SIXTH CLAIM
UNJUST ENRICHMENT
(Against all Defendants)

191. Plaintiffs repeat, reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 190, above, as though set forth at length herein.

192. The conduct of Defendants has secured to each Defendant profits and value, which unjustly enriches Defendants to the detriment and expense of Plaintiffs. Plaintiffs hereby request the disgorgement of all profits and value unjustly earned or retained by Defendants.

SEVENTH CLAIM
UNFAIR COMPETITION
(Against All Defendants)

193. Plaintiffs repeat, reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 193, above, as though set forth at length herein.

194. Defendants' illegal and unfair conduct interfered and continues to interfere with Plaintiffs' ability to compete, and interfered with and continues to interfere with Plaintiffs' ability to extract oil and natural gas from the Timor Gap.

195. Defendants' acts complained of herein have damaged Plaintiffs. Plaintiffs are entitled to an award of (i) their damages; (ii) an accounting of Defendants' profits; and (iii) the award of Defendants' unjust profits and Plaintiffs' lost profits.

196. The aforementioned acts of Defendants were committed with oppression and malice. Plaintiffs are therefore entitled to punitive damages.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against all Defendants and Does 1-50 jointly and severally, as follows:

1. For all damages permitted by the common law, contract or statute in an amount to be determined at trial, but not less than $10.5 billion over the productive life of the resources;

2. For treble damages pursuant to 18 U.S.C. § 1964(c);

3. For treble damages pursuant to 15 U.S.C. § 15;

4. For all punitive and exemplary damages to which Plaintiffs may be entitled to under applicable law or statute;

5. For disgorgement of all improperly obtained revenue;

6. For a constructive trust with respect to all improper revenue or other property improperly possessed or controlled by any defendant or any agent of any defendant;

7. For further damages according to proof;

8. For pre-judgment and post-judgment interest;

9. For any and all costs of suit herein incurred, including, but not limited to, attorneys' fees; and

10. For such other and further relief that the Court may deem just and proper.

Respectfully submitted this 1st day of March, 2005.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OCEANIC EXPLORATION COMPANY, a Delaware corporation, 7800 East Dorado Place, Suite 250, Englewood, Colorado 80111; and PETROTIMOR COMPANHIA DE PETROLEOS, S.A.R.L., a corporation organized under the laws of Portugal, 7800 East Dorado Place, Suite 250, Englewood, Colorado 80111,
Plaintiffs,

v.

CONOCOPHILLIPS, a Delaware corporation; CONOCOPHILLIPS COMPANY, a Delaware corporation,
Defendants.

Civil Action No. 04 CV 00332 EGS

CONOCOPHILLIPS' AND CONOCOPHILLIPS COMPANY'S ANSWER TO THE SECOND AMENDED COMPLAINT

Defendants, CONOCOPHILLIPS and CONOCOPHILLIPS COMPANY (the "ConocoPhillips Defendants") hereby answer the allegations of the Second Amended Complaint, on their own behalf only, and assert affirmative defenses, as follows. Numbered paragraphs and headings herein correspond to the paragraphs and headings of the Second Amended Complaint.

The repetition of headings in this Answer is for the sake of convenience only and does not represent an admission to any allegations or characterizations contained in such headings. To the extent that any allegation or characterization contained in the Second Amended Complaint is not specifically admitted, it is denied.

ANSWER
I. PRELIMINARY STATEMENT

1. The ConocoPhillips Defendants admit that Oceanic has brought this action; but the ConocoPhillips Defendants deny that they, their affiliates or their respective employees bribed Mari Alkatiri or others, and deny that Oceanic has suffered any damages or was prevented from bidding "for rights to explore for and produce oil and natural gas from the seabed between East Timor and Australia." The ConocoPhillips Defendants deny the remaining allegations in paragraph 1 of the Second Amended Complaint.

2. The ConocoPhillips Defendants admit that during the exercise of Indonesian sovereignty over East Timor, Indonesia and Australia entered into a treaty which provided for certain joint sovereignty over development of natural resources, and refer to the treaty for the terms thereof. The ConocoPhillips Defendants also admit that the Joint Authority created by that treaty awarded certain production sharing contracts to Phillips entities that are now affiliates of the later-formed ConocoPhillips, giving the Phillips entities certain rights to explore for and produce oil and natural gas within the areas defined by those contracts. The ConocoPhillips Defendants deny the remaining

allegations in paragraph 2 of the Second Amended Complaint.

3. The ConocoPhillips Defendants deny the allegations in paragraph 3 of the Second Amended Complaint.

4. The ConocoPhillips Defendants admit that an employee of a ConocoPhillips affiliate referred in the course of making other statements to the potential loss of hundreds of millions of dollars of investment in the Timor Sea developments as a potential disaster of major proportions. The ConocoPhillips Defendants deny the remaining allegations in paragraph 4 of the Second Amended Complaint.

5. The ConocoPhillips Defendants deny that Oceanic "had positioned itself to compete for and bid for the exploration and production rights that would be awarded in the Timor Gap." The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 5 of the Second Amended Complaint and therefore deny the same.

6. The ConocoPhillips Defendants deny the allegations in paragraph 6 of the Second Amended Complaint.

II. JURISDICTION AND VENUE

7. The ConocoPhillips Defendants deny the allegations in paragraph 7 of the Second Amended Complaint.

8. The ConocoPhillips Defendants deny the allegations in paragraph 8 of the Second Amended Complaint.

9. The ConocoPhillips Defendants admit that ConocoPhillips has a government relations office at 1776 I Street, Washington, DC, and that ConocoPhillips Company has registered with the government of the District of Columbia as a foreign business corporation. The ConocoPhillips Defendants admit that James Godlove works in the District of Columbia, but deny that he resides in the District or that he resided or worked in the District of Columbia at the time that the events at issue in the Complaint took place. The ConocoPhillips Defendants refer to the statutes cited for their true contents and deny the remaining allegations in paragraph 9 of the Second Amended Complaint.

III. PARTIES

A. Plaintiffs

10. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 10 of the Second Amended Complaint, and therefore deny the same, but admit that Oceanic's court filings and SEC filings assert that Oceanic is organized under Delaware law and has its corporate offices in Englewood, Colorado.

11. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 11 of the Second Amended Complaint and therefore deny the same.

B. The ConocoPhillips Defendants

12. The ConocoPhillips Defendants admit that ConocoPhillips is a corporation organized under the laws of the State of Delaware with a principal place of business in Houston, Texas. The ConocoPhillips Defendants admit that ConocoPhillips has a government relations office at 1776 I Street, Washington, DC. The ConocoPhillips Defendants deny the remaining allegations in paragraph 12 of the Second Amended Complaint.

13. The ConocoPhillips Defendants admit that ConocoPhillips Company is a corporation organized under the laws of the State of Delaware, that it has registered to do business in the District of Columbia and that it has a registered agent for service of process in the District of Columbia.

14. The defendant identified in paragraph 14 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

15. The defendant identified in paragraph 15 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

16. The defendant identified in paragraph 16 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

17. The defendant identified in paragraph 17 of the Second Amended Complaint has been dismissed for

lack of personal jurisdiction and accordingly no answer is required.

18. The defendant identified in paragraph 18 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

19. The defendant identified in paragraph 19 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

20. The defendant identified in paragraph 20 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

21. The defendant identified in paragraph 21 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

22. The defendant identified in paragraph 22 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

23. The defendant identified in paragraph 23 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

24. The defendant identified in paragraph 24 of the Second Amended Complaint has been dismissed for

lack of personal jurisdiction and accordingly no answer is required.

25. The defendant identified in paragraph 25 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

26. The defendant identified in paragraph 26 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

27. The defendant identified in paragraph 27 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

28. The defendant identified in paragraph 28 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

29. The defendant identified in paragraph 29 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

30. The defendant identified in paragraph 30 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

31. The defendant identified in paragraph 31 of the Second Amended Complaint has been dismissed for

lack of personal jurisdiction and accordingly no answer is required.

32. The defendant identified in paragraph 32 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

33. The defendant identified in paragraph 33 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

34. The defendant identified in paragraph 34 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

35. The defendant identified in paragraph 35 of the Second Amended Complaint has been dismissed for lack of personal jurisdiction and accordingly no answer is required.

36. The ConocoPhillips Defendants deny the allegations in paragraph 36 of the Second Amended Complaint. The entities identified in paragraph 36 are separate legal entities, and the ConocoPhillips Defendants deny that it is appropriate to treat them as a single entity "ConocoPhillips," or otherwise to fail to differentiate them. Throughout this answer, the ConocoPhillips Defendants' references to "the ConocoPhillips Defendants" are, for convenience only, to the entities with the proper legal names "ConocoPhillips" and "ConocoPhillips Company"; references to

ConocoPhillips are exclusively to the entity known by the legal name ConocoPhillips.

37. The defendants identified in paragraphs 14 through 35 of the Second Amended Complaint have been dismissed for lack of personal jurisdiction and accordingly no answer is required with respect to them. The ConocoPhillips Defendants deny the allegations in paragraph 37 of the Second Amended Complaint.

C. The ConocoPhillips Group

38. The entities identified in paragraph 38 of the Second Amended Complaint are separate legal entities, and the ConocoPhillips Defendants deny that it is appropriate to treat them collectively as "the ConocoPhillips Group." The ConocoPhillips Defendants deny the remaining allegations in paragraph 38 of the Second Amended Complaint.

39. The ConocoPhillips Defendants deny the allegations in paragraph 39 of the Second Amended Complaint.

D. The Designated Authority Group

40. The ConocoPhillips Defendants admit that the Designated Authority entered into production sharing contracts with certain companies affiliated with ConocoPhillips, and refer to those contracts for their true contents. The ConocoPhillips Defendants deny the remaining allegations in paragraph 40 of the Second Amended Complaint.

41. The ConocoPhillips Defendants deny the allegations in paragraph 41 of the Second Amended Complaint.

E. Doe Defendants

42. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 42 of the Second Amended Complaint and therefore deny the same.

43. The ConocoPhillips Defendants deny the allegations in paragraph 43 of the Second Amended Complaint.

F. Non-Defendant Co-Conspirators

44. The ConocoPhillips Defendants admit that Oceanic has not named the Joint Authority, Pertamina or BPMIGAS as defendants in the Second Amended Complaint. The ConocoPhillips Defendants deny the remaining allegations in paragraph 44 of the Second Amended Complaint.

1. The Pertamina Group

45. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 45 of the Second Amended Complaint and therefore deny the same.

46. To the extent paragraph 46 of the Second Amended Complaint purports to allege any illegal conduct by or the existence of any illegal enterprise involving any of the ConocoPhillips Defendants, such allegations are denied. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in

paragraph 46 of the Second Amended Complaint and therefore deny the same.

2. The Joint Authority Group

47. The ConocoPhillips Defendants admit that when Indonesia exercised sovereignty in East Timor it formed the Timor Gap Joint Authority (the "Joint Authority") in agreements with Australia, and that the Joint Authority entered into production sharing contracts with certain companies affiliated with ConocoPhillips. The ConocoPhillips Defendants refer to those contracts for the true contents thereof. The ConocoPhillips Defendants deny the remaining allegations in paragraph 47 of the Second Amended Complaint.

48. To the extent paragraph 48 of the Second Amended Complaint purports to allege any illegal conduct by or the existence of a RICO enterprise involving any ConocoPhillips Defendants, such allegations are denied. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 48 of the Second Amended Complaint and therefore deny the same.

IV. BACKGROUND

A. The Timor Gap

49. The ConocoPhillips Defendants admit that the Timor Gap is an area of the Timor Sea between East Timor and Australia. The ConocoPhillips Defendants further admit that on or about May 17, 1971 Australia

and Indonesia signed the Australian-Indonesian Continental Shelf Agreement that delimited certain maritime borders between Australia and Indonesia on both sides of East Timor. The ConocoPhillips Defendants admit that the boundary line in the Timor Sea between Australia and Indonesia was not continuous and that the break in the Indonesian-Australian boundary line between East Timor and Australia came to be known as the "Timor Gap." The ConocoPhillips Defendants admit that a map generally depicting the Timor Gap is attached as Exhibit A, but deny its accuracy for any purpose other than a general depiction of the Timor Gap's location in the Timor Sea between Australia and East Timor. The ConocoPhillips Defendants deny the remaining allegations in paragraph 49 of the Second Amended Complaint.

50. The ConocoPhillips Defendants admit that certain petroleum and natural gas reserves (including reserves within the Bayu-Undan, Elang-Kakatua, Kakatua North and Sunrise fields) are located in the Timor Sea between Australia and Indonesia and East Timor, and that at least some of these reserves are located in "the Timor Gap." The ConocoPhillips Defendants are without sufficient information to understand the basis for or to form a belief about the truth or falsity of the reserve or value estimates stated in paragraph 50 of the Second Amended Complaint and therefore deny the remaining allegations in paragraph 50.

B. Oceanic Exploration Company

51. The ConocoPhillips Defendants deny that "Oceanic is an established oil and gas exploration company with a history of successful exploration." The ConocoPhillips

Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 51 of the Second Amended Complaint and therefore deny the same.

V. COMMON ALLEGATIONS

A. Oceanic's Activities in the Timor Sea

52. The ConocoPhillips Defendants deny the allegations contained in the first sentence in paragraph 52 of the Second Amended Complaint. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained within paragraph 52 of the Second Amended Complaint and therefore deny the same.

53. The ConocoPhillips Defendants deny the last sentence of paragraph 53 of the Second Amended Complaint and deny that any rights were vested in Oceanic or Petrotimor, as alleged in paragraph 53 of the Second Amended Complaint. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained within paragraph 53 of the Second Amended Complaint and therefore deny the same.

54. The ConocoPhillips Defendants deny that any rights were vested in Oceanic or Petrotimor, as alleged in paragraph 54 of the Second Amended Complaint. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained within

paragraph 54 of the Second Amended Complaint and therefore deny the same.

55. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained within paragraph 55 of the Second Amended Complaint and therefore deny the same.

56. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained within paragraph 56 of the Second Amended Complaint and therefore deny the same.

B. Indonesian Invasion of East Timor

57. The ConocoPhillips Defendants admit that after December 1975 Indonesia occupied and annexed East Timor. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained within paragraph 57 of the Second Amended Complaint and therefore deny the same.

58. The ConocoPhillips Defendants admit that on or about July 17, 1976 East Timor was formally annexed into Indonesia as its twenty-seventh province. The ConocoPhillips Defendants deny the remaining allegations in paragraph 58 of the Second Amended Complaint.

C. ConocoPhillips' Corruption in Indonesia

The ConocoPhillips Defendants deny the allegations in subheading V (C) of the Second Amended Complaint.

59. The ConocoPhillips Defendants deny the allegations in paragraph 59 of the Second Amended Complaint.

60. The ConocoPhillips Defendants deny that they, their affiliates, predecessors or employees made corrupt payments as alleged in paragraph 60 of the Second Amended Complaint, and further deny the allegations in the first three sentences and the last two sentences in paragraph 60 of the Second Amended Complaint. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 60 of the Second Amended Complaint and therefore deny the same.

61. The ConocoPhillips Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations in the first sentence in paragraph 61 of the Second Amended Complaint and therefore deny the same. The ConocoPhillips Defendants deny the remaining allegations in paragraph 61 of the Second Amended Complaint.

62. To the extent paragraph 62 of the Second Amended Complaint purports to allege any illegal conduct by or the existence of any illegal enterprise involving any of the ConocoPhillips Defendants, such allegations are denied. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 62 of the Second Amended Complaint and therefore deny the same.

63. The ConocoPhillips Defendants deny the allegations in paragraph 63 of the Second Amended Complaint.

64. The ConocoPhillips Defendants deny the allegations in paragraph 64 of the Second Amended Complaint.

65. The ConocoPhillips Defendants state that they have not been able to identify information to confirm whether the allegations in paragraph 65 of the Second Amended Complaint are true and therefore deny the same, and further deny any improper reporting on tax returns.

66. The ConocoPhillips Defendants admit that the Internal Revenue Code allows certain foreign tax credits but refer to the relevant statutes and regulations for the true contents of those provisions. The ConocoPhillips Defendants deny the remaining allegations in paragraph 66 of the Second Amended Complaint.

67. The ConocoPhillips Defendants deny the allegations in paragraph 67 of the Second Amended Complaint.

68. The ConocoPhillips Defendants deny the allegations in paragraph 68 of the Second Amended Complaint.

69. The ConocoPhillips Defendants admit that ConocoPhillips uses a calendar year as its tax year and that ConocoPhillips has mailed certain United States Consolidated Tax Returns (Form 1120) to the Internal Revenue Center in Austin, Texas. The ConocoPhillips Defendants deny the remaining allegations in paragraph 69 of the Second Amended Complaint.

70. The ConocoPhillips Defendants deny the allegations in paragraph 70 of the Second Amended Complaint.

D. As a Result of ConocoPhillips' Corruption in Indonesia, ConocoPhillips Gained Favored Status with the Joint Authority

The ConocoPhillips Defendants deny the allegations in subheading V (D) of the Second Amended Complaint.

71. The ConocoPhillips Defendants deny the allegations in paragraph 71 of the Second Amended Complaint.

72. The ConocoPhillips Defendants admit that on or about December 11, 1989 Indonesia and Australia agreed to pursue the development of certain oil and natural gas reserves in the Timor Gap by agreeing to a Zone of Cooperation between East Timor and Northern Australia, and that Area A of the Zone of Cooperation overlaps with some of the area in which Oceanic claims it has been given a concession. The ConocoPhillips Defendants deny the remaining allegations in paragraph 72 of the Second Amended Complaint.

73. The ConocoPhillips Defendants admit that Australia and Indonesia created the Joint Authority to represent their joint sovereign interests over the production, marketing and sales of oil and natural gas in the Zone of Cooperation; the ConocoPhillips Defendants deny the characterization of the Joint Authority as a purely commercial entity. The ConocoPhillips Defendants admit the Joint Authority established its head office in Jakarta, with an operative office in Darwin, Australia. The ConocoPhillips Defendants are without sufficient

knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 73 of the Second Amended Complaint and therefore deny the same.

74. The ConocoPhillips Defendants admit that on behalf of Australia and Indonesia the Joint Authority was responsible for activities relating to exploration for and exploitation of the petroleum resources in Area A of the Zone of Cooperation and that it had as a goal to achieve the optimum commercial utilization of the petroleum resources of Area A. The ConocoPhillips Defendants admit that the Joint Authority had the right, if it wished, to market any or all petroleum production. The ConocoPhillips Defendants admit that the Joint Authority was responsible on behalf of Australia and Indonesia for the marketing, selling and disposing of its portion of the oil and natural gas produced in the Joint Petroleum Development Area. The ConocoPhillips Defendants deny the remaining allegations in paragraph 74 of the Second Amended Complaint.

75. The ConocoPhillips Defendants admit that the Joint Authority entered into certain production sharing contracts, but refer to such contracts for their true contents. The ConocoPhillips Defendants deny the remaining allegations in paragraph 75 of the Second Amended Complaint.

76. The ConocoPhillips Defendants admit that the Joint Authority had independent legal status, the ability to contract, to acquire and dispose of moveable and immovable property and to institute and be party to legal proceedings. The ConocoPhillips Defendants further refer to the relevant legal documents and

authorities for a complete and true characterization of the Joint Authority.

77. The ConocoPhillips Defendants admit that in 1991, the Joint Authority released for tender 14 contract areas in Zone A of the Zone of Cooperation. The ConocoPhillips Defendants deny the remaining allegations in paragraph 77 of the Second Amended Complaint.

78. The ConocoPhillips Defendants admit that bidding for contracts in Zone A of the Zone of Cooperation was opened on or about June 24, 1991 and was to close on or about October 7, 1991. The ConocoPhillips Defendants further admit that a former Phillips-affiliated entity participated in the bid for Block 91-13. The ConocoPhillips Defendants also admit that the financial commitment to be undertaken by the bidding company in exploring for hydrocarbon resources was one of the factors used in evaluating bids. The ConocoPhillips Defendants deny the remaining allegations in paragraph 78 of the Second Amended Complaint.

79. The ConocoPhillips Defendants deny the allegations in paragraph 79 of the Second Amended Complaint.

80. The ConocoPhillips Defendants admit that in connection with the 1991 bidding process, Oceanic did not submit a bid for Block 91-13 or any other Block released at that time. The ConocoPhillips Defendants admit that Portugal attempted to bring an action in the International Court of Justice but refer to the proceedings in that case for the true nature and contents of the proceeding. The ConocoPhillips

Defendants deny the remaining allegations in paragraph 80 of the Second Amended Complaint.

81. The ConocoPhillips Defendants deny that Oceanic had a "long history and involvement in the area." The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 81 of the Second Amended Complaint and therefore deny the same.

82. The ConocoPhillips Defendants admit that the Bayu-Undan natural gas field falls within Blocks 91-12 and 91-13. The ConocoPhillips admit that an estimate was made with the combined input of participants in the Bayu-Undan project that the field could contain approximately 400 million barrels of petroleum liquids and approximately 3.4 trillion cubic feet of natural gas. The ConocoPhillips Defendants deny the remaining allegations in paragraph 82 of the Second Amended Complaint.

E. East Timor Gains Its Independence and Vitiates All Prior Interests in the Timor Sea

The ConocoPhillips Defendants admit that East Timor vitiated under East Timorese law all prior interests in the Timor Sea other than those confirmed by action of the new East Timorese government, but the ConocoPhillips Defendants deny that Oceanic ever had any prior legitimate interests in the Timor Sea. The ConocoPhillips Defendants deny any remaining allegations contained in heading V (E) of the Second Amended Complaint.

83. The ConocoPhillips Defendants admit that on August 30, 1999, an election in East Timor resulted in a vote in favor of independence. The ConocoPhillips Defendants admit that the United Nations Security Council, on October 25, 1999, established a United Nations Transitional Administration in East Timor for the purposes stated in United Nations Security Council Resolution 1272. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 83 of the Second Amended Complaint and therefore deny the same.

84. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 84 of the Second Amended Complaint and therefore deny the same.

85. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 85 of the Second Amended Complaint and therefore deny the same.

86. The ConocoPhillips Defendants admit that James Godlove made a statement that included, but was not limited to, the language quoted in paragraph 86 of the Second Amended Complaint, but refer to the text of that statement for the true contents and context of that statement. The ConocoPhillips deny the remaining allegations in paragraph 86 of the Second Amended Complaint.

87. The ConocoPhillips Defendants admit that the Exchange of Notes were signed on February 10, 2000 and admit that the Exchange of Notes provided for an interim agreement to continue the terms of the Timor Gap Treaty. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 87 of the Second Amended Complaint and therefore deny the same.

88. The ConocoPhillips Defendants admit that the East Timorese Constitution contained provisions addressing natural resources and concessions of natural resource rights under East Timorese law, but refer to the provisions themselves for their true contents and effect under East Timorese law. The ConocoPhillips Defendants deny the remaining allegations in paragraph 88 of the Second Amended Complaint.

F. ConocoPhillips Bribes East Timor's Prime Minister Mari Alkatiri

The ConocoPhillips Defendants deny the allegations in subheading V (F) of the Second Amended Complaint.

89. The ConocoPhillips Defendants deny the allegations in paragraph 89 of the Second Amended Complaint.

90. The ConocoPhillips Defendants deny the allegations in paragraph 90 of the Second Amended Complaint.

91. The ConocoPhillips Defendants deny the allegations contained in the last sentence in paragraph 91 of the Second Amended Complaint. The ConocoPhillips Defendants are without sufficient knowledge or

information to form a belief as to the truth or falsity of the remaining allegations in paragraph 91 of the Second Amended Complaint and therefore deny the same.

92. The ConocoPhillips Defendants admit that Mari Alkatiri was the Chief Economic Affairs Minister for UNTAET from August 30, 1999 until April 14, 2002, and that Jose Teixeira is a commissioner on the Designated Authority. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 92 of the Second Amended Complaint and therefore deny the same.

93. The ConocoPhillips Defendants admit that the 2000 Annual Report of Phillips Petroleum Company contains language referring to an affiliate having "donated 13 trucks for agricultural use," "to help the new nation of East Timor." The ConocoPhillips Defendants further admit that the 2000 Annual Report pictured Stephen Brand, "Australasia division president," presenting an additional vehicle to be used as "a mobile medical clinic" to three nuns: Sister Marie Carmen Pangilinan, Sister Alma Marie Cantorna and Sister Bernadette Velayo. The ConocoPhillips Defendants deny the remaining allegations in paragraph 93 of the Second Amended Complaint.

94. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in the first sentence in paragraph 94 of the Second Amended Complaint. The ConocoPhillips Defendants deny the remaining allegations in paragraph 94 of the Second Amended Complaint.

95. The ConocoPhillips Defendants admit that on or about July 5, 2001, Mari Alkatiri, then Cabinet Member for Economic Affairs for the UNTAET, signed a Memorandum of Understanding with Australia, and refer to the text of that Memorandum for its true contents. The ConocoPhillips Defendants admit that the area of the Joint Petroleum Development Area overlaps with the area that Oceanic claims to be covered by a concession from Portugal, but deny the validity or effect of any such concession. The ConocoPhillips Defendants deny the remaining allegations in paragraph 95 of the Second Amended Complaint.

96. The ConocoPhillips Defendants admit that consideration of tax rates on ConocoPhillips affiliates resulted in consideration of what the consequences on projects in the area of such tax rates would be, including possible suspension of further investment in the projects. The ConocoPhillips Defendants deny that James Mulva, Stephen Brand, and James Godlove arrived in Dili on August 24, 2001, but admit that they arrived in Dili on August 25, 2001 traveling on a ConocoPhillips aircraft Registration No. N663P. The ConocoPhillips Defendants deny the remaining allegations in paragraph 96 of the Second Amended Complaint.

97. The ConocoPhillips Defendants admit that the August 25, 2001 visit to East Timor took place shortly before elections in East Timor, that James Mulva (and others from ConocoPhillips affiliates) met with Alkatiri (and other UNTAET representatives), and that the representatives of ConocoPhillips affiliates and of UNTAET discussed deferring further discussion about

the Bayu-Undan gas project until after the elections. The ConocoPhillips Defendants deny the remaining allegations in paragraph 97 of the Second Amended Complaint.

98. The ConocoPhillips Defendants admit that on or about October 12, 2001, certain ConocoPhillips officials flew to Dili from Perth on a ConocoPhillips aircraft, Registration No. N663P, later returning to Darwin. The ConocoPhillips Defendants deny the remaining allegations in paragraph 98 of the Second Amended Complaint.

99. The ConocoPhillips Defendants deny the allegations in paragraph 99 of the Second Amended Complaint.

100. The ConocoPhillips Defendants admit that on or about April 14, 2002, Mari Alkatiri was designated to become the Prime Minister of East Timor. The ConocoPhillips Defendants further admit that James Mulva, flew on a ConocoPhillips aircraft, Registration No. N663P, to visit Dili, departing on April 17, 2002, in the company of Billy Parker, Stephen Brand and Blair Murphy, with a destination of Sydney, Australia. The ConocoPhillips Defendants further admit that East Timor celebrated its independence day the following month. The ConocoPhillips deny the remaining allegations in paragraph 100 of the Second Amended Complaint.

101. The ConocoPhillips Defendants admit that James Mulva, ConocoPhillips CEO, traveled to Dili and attended East Timor's independence celebrations. The ConocoPhillips Defendants further admit that James Mulva traveled on a ConocoPhillips aircraft,

Registration No. N667P, and arrived in Dili on or about May 19, 2002, in the company of Blair Murphy, Stephen Brand and Billy Parker. The ConocoPhillips Defendants also admit that prior to the arrival in Dili, the aircraft stopped in Darwin, Australia. The ConocoPhillips Defendants deny the remaining allegations in paragraph 101 of the Second Amended Complaint.

102. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 102 of the Second Amended Complaint and therefore deny the same.

103. The ConocoPhillips Defendants deny the allegations in paragraph 103 of the Second Amended Complaint.

104. The ConocoPhillips Defendants admit that after being signed on or about May 20, 2002, the Timor Sea Treaty required ratification by both countries. The ConocoPhillips Defendants also admit that a International Unitization Agreement was contemplated by the Timor Sea Treaty as an agreement between the two countries in light of the fact that the Greater Sunrise gas field straddled the eastern border of the Joint Petroleum Development Area and is thus partially outside the boundaries covered by the Timor Sea Treaty. The ConocoPhillips Defendants deny the remaining allegations in paragraph 104 of the Second Amended Complaint.

105. The ConocoPhillips Defendants admit that certain of its affiliates asserted that spending company capital to proceed with the Darwin liquid natural gas plant

would not be appropriate until such time as the process of ratifying the Timor Sea Treaty was complete. The ConocoPhillips Defendants deny making any knowingly false statements. The ConocoPhillips Defendants have not been able to confirm the truth of the remaining allegations in paragraph 105 of the Second Amended Complaint and therefore deny the same.

106. The ConocoPhillips Defendants admit that the Timor Sea Treaty was ratified by East Timor in December of 2002, before agreeing to the International Unitization Agreement with respect to the Sunrise oil fields. The ConocoPhillips Defendants admit that a January 2003 publication reports that Blair Murphy said, in substance, that East Timor could receive approximately $3 billion from the Bayu-Undan oil field over the succeeding 17 years. The ConocoPhillips Defendants deny the remaining allegations in paragraph 106 of the Second Amended Complaint.

107. The ConocoPhillips Defendants deny the allegations in paragraph 107 of the Second Amended Complaint.

108. The ConocoPhillips Defendants admit that certain affiliates asserted that ratification of the Timor Sea Treaty by March 11, 2003 was important in order to go forward with the construction of a liquid natural gas facility in Darwin and to meet a construction schedule and completion deadline. The ConocoPhillips Defendants deny the remaining allegations in 108 of the Second Amended Complaint, but admit that the Timor Sea Treaty formally came into effect on April 2, 2003.

109. The ConocoPhillips Defendants admit that the Designated Authority was formed on or about April 2, 2003 to represent the sovereign interests of Australia and East Timor with respect to hydrocarbon resources within the Timor Gap. The ConocoPhillips Defendants admit that the Designated Authority entered into production sharing contracts on April 2, 2003, including production sharing contracts with groups that included certain ConocoPhillips affiliates. The ConocoPhillips Defendants further admit that the Designated Authority shared the potential benefit associated with oil and gas production under these contracts; but deny that the Designated Authority risked capital in connection with the associated ventures. The ConocoPhillips Defendants admit that under the production sharing contracts awarded, the Designated Authority reserved the right, if it wished, to engage in certain downstream activities. The ConocoPhillips Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations in the last sentence of paragraph 109 of the Second Amended Complaint and therefore deny the same. The ConocoPhillips Defendants deny the remaining allegations in paragraph 109 of the Second Amended Complaint.

110. The ConocoPhillips Defendants admit that James Mulva traveled to Dili to meet with Mari Alkatiri and others in the second week of April, 2003, flying with William Berry and Blair Murphy on a ConocoPhillips aircraft, Registration No. N667P, which departed Dili on April 14, 2003 for Darwin, Australia. The ConocoPhillips Defendants deny the remaining allegations in paragraph 110 of the Second Amended Complaint.

111. The ConocoPhillips Defendants admit that it was announced on June 15, 2003, that the Designated Authority had approved the gas development plan for Bayu-Undan and that ConocoPhillips affiliates would then proceed with the approximately $1.5 billion development that included a pipeline from the Bayu-Undan gas field to Darwin, Australia, and the construction of a liquefied natural gas plant in Darwin. The ConocoPhillips Defendants admit that production of gas condensate in Bayu-Undan began in 2004.

G. Oceanic's Efforts to Obtain New Interests in the Timor Sea or New Recognition of its Prior Interests

The ConocoPhillips Defendants are without sufficient information to form a belief as to the truth or falsity of any allegations in heading V (G) of the Second Amended Complaint and therefore deny the same.

112. The ConocoPhillips Defendants deny the allegations in paragraph 112 of the Second Amended Complaint.

113. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 113 of the Second Amended Complaint and therefore deny the same.

114. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 114 of the Second Amended Complaint and therefore deny the same.

115. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 115 of the Second Amended Complaint and therefore deny the same.

116. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 116 of the Second Amended Complaint and therefore deny the same.

117. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 117 of the Second Amended Complaint and therefore deny the same.

118. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 118 of the Second Amended Complaint and therefore deny the same.

119. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 119 of the Second Amended Complaint and therefore deny the same.

120. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 120 of the Second Amended Complaint and therefore deny the same.

121. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 121 of the Second Amended Complaint and therefore deny the same.

122. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 122 of the Second Amended Complaint and therefore deny the same.

123. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 123 of the Second Amended Complaint and therefore deny the same.

124. The ConocoPhillips Defendants admit that ConocoPhillips affiliates own a portion of the interests of companies who are involved in development of the Sunrise Field. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in the first and second sentences in paragraph 124 of the Second Amended Complaint and therefore deny the same. The ConocoPhillips Defendants deny the remaining allegations in paragraph 124.

125. The ConocoPhillips Defendants admit that on or about April 2, 2003, the Designated Authority awarded seven production sharing contracts in the Joint Petroleum Development Area to companies that previously had production sharing contracts in the same area, as required by the terms of the Timor Sea

Treaty. The ConocoPhillips Defendants deny the remaining allegations in paragraph 125 of the Second Amended Complaint.

126. The ConocoPhillips Defendants admit that six production sharing contracts awarded by the Designated Authority were awarded to groups that included companies now known as ConocoPhillips (91-12) Pty Ltd.; ConocoPhillips (91-13) Pty Ltd.; ConocoPhillips JPDA Pty Ltd.; ConocoPhillips (96-16) Pty Ltd.; ConocoPhillips (95-19) Pty Ltd.; ConocoPhillips (96-20) Pty Ltd.; and ConocoPhillips (00-21) Pty Ltd. The ConocoPhillips Defendants deny the remaining allegations in paragraph 126 of the Second Amended Complaint.

127. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in the first and second sentences in paragraph 127 of the Second Amended Complaint and therefore deny the same. The ConocoPhillips Defendants deny the remaining allegations in paragraph 127 of the Second Amended Complaint.

VI. DEFENDANTS' CONTACTS WITH THE UNITED STATES

128. The ConocoPhillips Defendants deny the allegations in paragraph 128 of the Second Amended Complaint.

129. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph

129 of the Second Amended Complaint and therefore deny the same.

130. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 130 of the Second Amended Complaint and therefore deny the same.

131. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 131 of the Second Amended Complaint and therefore deny the same.

132. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in first sentence in paragraph 132 of the Second Amended Complaint and therefore deny the same. The ConocoPhillips Defendants deny the remaining allegations in paragraph 132 of the Second Amended Complaint.

133. The ConocoPhillips Defendants deny the allegations in paragraph 133 of the Second Amended Complaint.

134. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 134 of the Second Amended Complaint and therefore deny the same.

135. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as

to the truth or falsity of the allegations in the first through third sentences in paragraph 135 of the Second Amended Complaint and therefore deny the same. The ConocoPhillips Defendants deny the remaining allegations in paragraph 135 of the Second Amended Complaint.

136. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in the first sentence in paragraph 136 of the Second Amended Complaint and therefore deny the same. The ConocoPhillips Defendants deny the remaining allegations in paragraph 136 of the Second Amended Complaint.

137. The ConocoPhillips Defendants deny the allegations in paragraph 137 of the Second Amended Complaint.

138. The ConocoPhillips Defendants deny the allegations contained in the first sentence in paragraph 138 of the Second Amended Complaint. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in the second sentence in paragraph 138 of the Second Amended Complaint and therefore deny the same.

139. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 139 of the Second Amended Complaint and therefore deny the same.

140. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 140 of the Second Amended Complaint and therefore deny the same.

141. The ConocoPhillips Defendants deny the allegations in paragraph 141 of the Second Amended Complaint.

142. The ConocoPhillips Defendants deny the allegations in paragraph 142 of the Second Amended Complaint.

143. The ConocoPhillips Defendants deny the allegations in paragraph 143 of the Second Amended Complaint.

144. The ConocoPhillips Defendants deny the allegations in paragraph 144 of the Second Amended Complaint.

VII. DEFENDANTS' CONCEALMENT OF INHERENTLY SECRET WRONGFUL ACTS AND PLAINTIFFS' DISCOVERY OF SUCH ACTS

The ConocoPhillips Defendants deny the allegations in subheading VII of the Second Amended Complaint.

145. The ConocoPhillips Defendants deny the allegations in paragraph 145 of the Second Amended Complaint.

146. The ConocoPhillips Defendants deny that they engaged in any illegal or wrongful acts. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of allegations in paragraph 146 the Second Amended Complaint concerning plaintiffs' knowledge, and therefore deny the same. The ConocoPhillips Defendants deny the remaining allegations in paragraph 131 of the Second Amended Complaint.

147. The ConocoPhillips Defendants admit that East Timor adopted a constitution in 2002, but refer to that document for its true contents. The ConocoPhillips Defendants deny the remaining allegations in paragraph 147 of the Second Amended Complaint.

148. The ConocoPhillips Defendants deny that they engaged in any illegal or wrongful acts and incorporate and restate their responses to the allegations in paragraphs 89 through 111 of the Second Amended Complaint. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 148 of the Second Amended Complaint and therefore deny the same.

149. The ConocoPhillips Defendants deny that they engaged in any illegal or wrongful acts, including bribery or the corruption of officials of East Timor. The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 149 of the Second Amended Complaint and therefore deny the same.

150. The ConocoPhillips Defendants deny that they engaged in any "corrupt acts." The ConocoPhillips Defendants are without sufficient knowledge or information to form a belief regarding any allegations in paragraph 150 of the Second Amended Complaint concerning Oceanic's knowledge and therefore deny the same.

FIRST CLAIM
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT
(18 U.S.C. §§ 1962(c) and 1964(c))
(Against All Defendants)

151. The ConocoPhillips Defendants incorporate and restate their responses to the allegations in paragraphs 1 through 150 of the Second Amended Complaint.

152. The ConocoPhillips Defendants deny the allegations in paragraph 152 of the Second Amended Complaint.

153. The ConocoPhillips Defendants deny the allegations in paragraph 153 of the Second Amended Complaint.

154. The ConocoPhillips Defendants deny the allegations in paragraph 154 of the Second Amended Complaint.

155. The ConocoPhillips Defendants deny the allegations in paragraph 155 of the Second Amended Complaint, including those in all of its subparts.

156. The ConocoPhillips Defendants deny that they or any ConocoPhillips affiliates or their employees violated 18 U.S.C. § 1962(c), and further deny that they or any of their affiliates or their employees are employed by the Joint Authority, the Designated Authority or the Pertamina Group. The ConocoPhillips Defendants lack sufficient information to form a belief as to the truth or falsity of any remaining allegations in paragraph 156 of the Second Amended Complaint and therefore deny the same.

157. The ConocoPhillips Defendants deny the allegations in paragraph 157 of the Second Amended Complaint.

158. The ConocoPhillips Defendants deny the allegations in paragraph 158 of the Second Amended Complaint.

159. The ConocoPhillips Defendants deny the allegations in paragraph 159 of the Second Amended Complaint.

160. The ConocoPhillips Defendants deny the allegations in paragraph 160 of the Second Amended Complaint.

161. The ConocoPhillips Defendants deny the allegations in paragraph 161 of the Second Amended Complaint.

SECOND CLAIM
CONSPIRACY TO VIOLATE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

(18 U.S.C. §§ 1962(d) and 1964(c))
(Against All Defendants)

162. The ConocoPhillips Defendants incorporate and restate their responses to the allegations in paragraphs 1 through 161 of the Second Amended Complaint.

163. The ConocoPhillips Defendants deny the allegations in paragraph 163 of the Second Amended Complaint.

164. The ConocoPhillips Defendants deny the allegations in paragraph 164 of the Second Amended Complaint.

165. The ConocoPhillips Defendants deny the allegations in paragraph 165 of the Second Amended Complaint, including those in all of its subparts.

166. The ConocoPhillips Defendants deny the allegations in paragraph 152 of the Second Amended Complaint.

167. The ConocoPhillips Defendants deny the allegations in paragraph 167 of the Second Amended Complaint.

168. The ConocoPhillips Defendants deny the allegations in paragraph 168 of the Second Amended Complaint.

169. The ConocoPhillips Defendants deny the allegations in paragraph 169 of the Second Amended Complaint.

170. The ConocoPhillips Defendants deny the allegations in paragraph 170 of the Second Amended Complaint.

THIRD CLAIM
VIOLATION OF THE ROBINSON-PATMAN ACT
15 U.S.C. §§ 13(c), 15
(Against the ConocoPhillips Defendants)

171. The ConocoPhillips Defendants incorporate and restate their responses to the allegations in paragraphs 1 through 170 of the Second Amended Complaint.

172. The ConocoPhillips Defendants admit that ConocoPhillips affiliated companies are engaged in the business of exploring for and extracting oil and natural gas. The ConocoPhillips Defendants deny the remaining allegations in paragraph 172 of the Second Amended Complaint.

173. The ConocoPhillips Defendants admit that the ConocoPhillips defendants engage in certain kinds of commerce. The ConocoPhillips Defendants deny the remaining allegations in paragraph 173 of the Second Amended Complaint.

174. The ConocoPhillips Defendants deny the allegations in paragraph 174 of the Second Amended Complaint.

175. The ConocoPhillips Defendants deny the allegations in paragraph 175 of the Second Amended Complaint.

FOURTH CLAIM
VIOLATION OF THE LANHAM ACT

(15 U.S.C. § 1126)
(Against All Defendants)

176. The ConocoPhillips Defendants incorporate and restate their responses to the allegations in paragraphs 1 through 175 of the Second Amended Complaint.

177. No answer to paragraph 177 of the Second Amended Complaint is required because plaintiffs' Fourth Claim has been dismissed as a matter of law. To the extent that any answer is required, the ConocoPhillips Defendants refer to the official records of the Paris Convention for the signatory status of Australia, Indonesia, Portugal and the United States.

178. No answer to paragraph 178 of the Second Amended Complaint is required because plaintiffs' Fourth Claim has been dismissed as a matter of law. To the extent that any answer is required, the ConocoPhillips Defendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 178 of the Second Amended Complaint and therefore deny the same.

179. No answer to paragraph 179 of the Second Amended Complaint is required because plaintiffs' Fourth Claim has been dismissed as a matter of law. To the extent that any answer is required, the ConocoPhillips Defendants deny the allegations in paragraph 179 of the Second Amended Complaint.

180. No answer to paragraph 180 of the Second Amended Complaint is required because plaintiffs' Fourth Claim has been dismissed as a matter of law. To

the extent that any answer is required, the ConocoPhillips Defendants deny the allegations in paragraph 180 of the Second Amended Complaint.

181. No answer to paragraph 181 of the Second Amended Complaint is required because plaintiffs' Fourth Claim has been dismissed as a matter of law. To the extent that any answer is required, the ConocoPhillips Defendants deny the allegations in paragraph 181 of the Second Amended Complaint.

182. No answer to paragraph 182 of the Second Amended Complaint is required because plaintiffs' Fourth Claim has been dismissed as a matter of law. To the extent that any answer is required, the ConocoPhillips Defendants deny the allegations in paragraph 182 of the Second Amended Complaint.

183. No answer to paragraph 183 of the Second Amended Complaint is required because plaintiffs' Fourth Claim has been dismissed as a matter of law. To the extent that any answer is required, the ConocoPhillips Defendants deny the allegations in paragraph 183 of the Second Amended Complaint.

184. No answer to paragraph 184 of the Second Amended Complaint is required because plaintiffs' Fourth Claim has been dismissed as a matter of law. To the extent that any answer is required, the ConocoPhillips Defendants deny the allegations in paragraph 184 of the Second Amended Complaint.

185. No answer to paragraph 185 of the Second Amended Complaint is required because plaintiffs' Fourth Claim has been dismissed as a matter of law. To

the extent that any answer is required, the ConocoPhillips Defendants deny the allegations in paragraph 185 of the Second Amended Complaint.

FIFTH CLAIM
INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
(Against the ConocoPhillips Defendants)

186. The ConocoPhillips Defendants incorporate and restate their responses to the allegations in paragraphs 1 through 185 of the Second Amended Complaint.

187. The ConocoPhillips Defendants deny the allegations in paragraph 187 of the Second Amended Complaint.

188. The ConocoPhillips Defendants deny the allegations in paragraph 188 of the Second Amended Complaint.

189. The ConocoPhillips Defendants deny the allegations in paragraph 189 of the Second Amended Complaint.

190. The ConocoPhillips Defendants deny the allegations in paragraph 190 of the Second Amended Complaint.

SIXTH CLAIM
UNJUST ENRICHMENT
(Against all Defendants)

191. The ConocoPhillips Defendants incorporate and restate their responses to the allegations in paragraphs 1 through 190 of the Second Amended Complaint.

192. No answer to paragraph 192 of the Second Amended Complaint is required because plaintiffs' Sixth Claim has been dismissed as a matter of law. To the extent that any answer is required, the ConocoPhillips Defendants deny the allegations in paragraph 192 of the Second Amended Complaint.

SEVENTH CLAIM
UNFAIR COMPETITION
(Against All Defendants)

193. The ConocoPhillips Defendants incorporate and restate their responses to the allegations in paragraphs 1 through 193 of the Second Amended Complaint.

194. The ConocoPhillips Defendants deny the allegations in paragraph 194 of the Second Amended Complaint.

195. The ConocoPhillips Defendants deny the allegations in paragraph 195 of the Second Amended Complaint.

196. The ConocoPhillips Defendants deny the allegations in paragraph 196 of the Second Amended Complaint.

DEFENSES

The ConocoPhillips Defendants state that they may assert the following defenses to bar, in whole or in part,

the plaintiffs' claims or any recovery plaintiffs seek, without assuming the burden of proof where it otherwise would not be placed on the ConocoPhillips Defendants:

1. Plaintiffs lack standing.

2. Plaintiffs' claims are barred by the political question doctrine.

3. Plaintiffs' claims are barred by the United States Constitution, including but not limited to the due process clauses of the Fifth and Fourteenth Amendments.

4. Plaintiffs' claims are barred because such claims involve the impermissible extraterritorial application of state law or United States law.

5. Plaintiffs' claims are barred by the act of state doctrine.

6. Plaintiffs' claims are barred by the constitutions of Australia and East Timor.

7. Plaintiffs' claims are barred by the Timor Sea Treaty.

8. Plaintiffs' claims are barred by the absence of a private right of action.

9. Plaintiffs fail to state claims as to which relief can be granted.

10. Plaintiffs' claims are barred by collateral estoppel and/or res judicata.

11. Plaintiffs have failed to plead their allegations of fraud with particularity.

12. Plaintiffs' claims are barred by the applicable statutes of limitations and/or statutes of repose.

13. Any property rights held at any time by the plaintiffs have been lost through adverse possession.

14. Plaintiffs' claims are barred by laches.

15. Plaintiffs' claims are barred by plaintiffs' unclean hands.

16. Plaintiffs' claims are barred by estoppel.

17. Plaintiffs' claims are barred by express or implied waiver.

18. Plaintiffs' claims are barred by ratification.

19. Plaintiffs' claims are barred by the doctrine of mistake.

20. Plaintiffs' claims are barred by the doctrine of impossibility.

21. Plaintiffs' claims are barred by plaintiffs' assumption of risk.

22. Plaintiffs' claims are barred because plaintiffs possessed no valid business relationship, expectancy or entitlement with which the ConocoPhillips Defendants could interfere.

23. Plaintiffs' claims are barred because the ConocoPhillips Defendants were not aware of any valid relationship, expectancy or entitlement and therefore the ConocoPhillips Defendants could not have intentionally interfered with the same.

24. Plaintiffs' claims are barred because the actions of the ConocoPhillips Defendants were justified and/or privileged.

25. Plaintiffs' claims are barred by the absence of any interstate commerce.

26. Plaintiff's claims are barred because they do not involve any "goods, wares or merchandise."

27. Plaintiffs' claims are barred because plaintiffs are not competitors in the relevant market.

28. Plaintiffs' claims are barred because no action of the ConocoPhillips Defendants crossed the "buy/seller" line.

29. Plaintiff's claims are barred because they do not involve an antitrust injury.

30. Plaintiffs' RICO claims are barred by the failure to plead any predicate acts with particularity.

31. Plaintiffs' RICO claims are barred because plaintiffs' alleged injuries were not proximately caused by the alleged RICO predicate acts.

32. Plaintiffs' RICO claims are barred under the doctrine of special injury; plaintiffs have not suffered

any injuries different from the alleged injuries resulting from the alleged RICO predicate acts.

33. Plaintiffs' RICO claims are barred by the absence of a pattern of racketeering.

34. Plaintiffs' RICO claims are barred by the absence of a related, continuous pattern of conduct.

35. Plaintiffs' RICO claims are barred by the absence of a RICO enterprise.

36. Plaintiffs' RICO claims are barred because by the absence of any overt act by the ConocoPhillips Defendants that allegedly caused plaintiffs' injuries or damages.

37. Plaintiffs' RICO claims are barred by the absence of any concrete financial loss resulting from any alleged activities by the ConocoPhillips Defendants.

38. Plaintiffs' RICO claims are barred by the absence of any distinction between a relevant RICO enterprise and the RICO defendants.

39. Plaintiffs RICO claims are barred by the absence of any distinction between a relevant RICO enterprise and the RICO conspiracy.

40. Plaintiffs' claims are barred because plaintiffs suffered no injury or damage.

41. Plaintiffs' claims are barred because no action of the ConocoPhillips Defendants could have proximately caused the plaintiffs' injuries or damages.

42. Plaintiffs' claims are barred because any alleged injuries or damages were the result of independent, superseding and intervening causes, factors or conditions or by third parties over whom the ConocoPhillips Defendants have no control and for which the ConocoPhillips Defendants are not liable.

43. Plaintiffs' claims are barred because plaintiffs failed to mitigate their damages.

44. Plaintiffs' claims are barred because plaintiffs' alleged damages, if any, are too speculative and uncertain.

45. Plaintiffs' claims are barred by set-off or recoupment of amounts the ConocoPhillips Defendants have invested in acquiring, exploring and developing same.

46. Plaintiffs' claim for punitive damages is barred by the due process clauses of the
United States Constitution, and any applicable constitution of any state of the United States.

47. Any award of punitive damages is barred unless the trial is bifurcated and all punitive damage issues are tried only after liability on the merits has been found.

48. Plaintiffs' claims are barred to the extent of any credit or offset for any and all sums that the plaintiffs have received or may hereafter receive by way of any and all settlements arising from plaintiffs' claims and causes of action.

49. Plaintiffs' claims are barred because plaintiffs' failure to join all indispensable parties precludes the Court from granting complete relief to those who are parties to the action and will result in prejudice to the ConocoPhillips Defendants and other indispensable parties.

The ConocoPhillips Defendants reserve the right to amend this pleading and to add additional basis for defense as discovery and investigation may warrant.

Dated: October 10, 2006
Respectfully submitted,
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STATUTES AND RULES

18 U.S.C. § 1964(c):

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee . . .

15 U.S.C. § 15 (a):

(a) Amount of recovery; prejudgment interest

Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Federal Rule of Civil Procedure 8(a):

(a) Claims for Relief.
A pleading that states a claim for relief must contain:
(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Federal Rule of Civil Procedure 12(b):

(b) How to Present Defenses.
Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:
(1) lack of subject-matter jurisdiction;
(2) lack of personal jurisdiction;
(3) improper venue;
(4) insufficient process;
(5) insufficient service of process;
(6) failure to state a claim upon which relief can be granted; and
(7) failure to join a party under Rule 19.
A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

Federal Rule of Civil Procedure 12(c):

(c) Motion for Judgment on the Pleadings
After the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings.

Federal Rule of Civil Procedure 12(d)

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

59 (2)

No. 09-1091

IN THE

Supreme Court of the United States

OCEANIC EXPLORATION COMPANY, *et al.*,
Petitioners,

v.

PHILLIPS PETROLEUM COMPANY ZOC, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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April 9, 2010

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QUESTION PRESENTED

Should this Court review a unanimous decision of the Fifth Circuit dismissing petitioners' RICO, antitrust, and common-law claims for lack of proximate cause — as required by three separate decisions of this Court (*Associated General Contractors v. California State Council*, 459 U.S. 519 (1983), *Holmes v. SIPC*, 503 U.S. 258 (1992), and *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006)), and as confirmed by this Court's latest decision on the subject just this past January (*Hemi Group v. City of New York*, 130 S. Ct. 983 (2010)) — based upon petitioners' attempt to re-characterize this case as supposedly presenting issues under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), warranting this Court to "reconsider its rulings" in those two decisions?

RULE 29.6 STATEMENT

ConocoPhillips, a publicly held company, holds 10% or more of the stock, directly or indirectly, of the following respondents:

Phillips Indonesia Inc.;

Phillips International Investment Inc.;

ConocoPhillips Australia Pty. Ltd.;

ConocoPhillips Australia Gas Holdings Pty. Ltd.;

ConocoPhillips JPDA Pty. Ltd.;

ConocoPhillips Pipeline Australia Pty. Ltd.;

ConocoPhillips STL Pty. Ltd.;

ConocoPhillips WA-248 Pty. Ltd.;

ConocoPhillips (03-12) Pty. Ltd.;

ConocoPhillips (03-13) Pty. Ltd.;

ConocoPhillips (03-16) Pty. Ltd.;

ConocoPhillips (03-19) Pty. Ltd.;

ConocoPhillips (03-20) Pty. Ltd.;

ConocoPhillips (03-21) Pty. Ltd.;

ConocoPhillips Company;

Darwin LNG Pty. Ltd.

Tokyo Gas Co., Ltd., a publicly held company, holds 10% or more of the stock, directly or indirectly, of respondents Tokyo Timor Sea Resources Pty. Ltd. and Tokyo Timor Sea Resources, Inc.

Tokyo Electric Power Company, Inc., a publicly held company, holds 10% or more of the stock, directly or indirectly, of respondents Tokyo Timor Sea Resources Pty. Ltd. and Tokyo Timor Sea Resources, Inc.

Eni SpA, a publicly held company, holds 10% or more of the stock, directly or indirectly, of respondent Darwin LNG Pty. Ltd.

Inpex Corporation, a publicly held company, holds 10% or more of the stock, directly or indirectly, of respondent Darwin LNG Pty. Ltd.

Santos Ltd., a publicly held company, holds 10% or more of the stock, directly or indirectly, of respondent Darwin LNG Pty. Ltd.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	vi
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	4
CONCLUSION	15

TABLE OF AUTHORITIES

Page(s)

Cases

Anza v. Ideal Steel Supply Corp.,
547 U.S. 451 (2006) ..... *passim*

Ashcroft v. Iqbal,
129 S. Ct. 1937 (2009) 3, 5, 6, 7, 9, 10, 11, 12

Associated General Contractors v. California State Council,
459 U.S. 519 (1983) ..... *passim*

Bell Atlantic Corp. v. Twombly,
550 U.S. 544 (2007) 3, 5, 6, 7, 9, 10, 11, 12

City of Columbia v. Omni Outdoor Advertising,
499 U.S. 365 (1991) 8 n.4

Hemi Group v. City of New York,
130 S. Ct. 983 (2010) ..... *passim*

Holmes v. SIPC,
503 U.S. 258 (1992) ..... *passim*

In re Tobacco (Guatemala), 83 F. Supp. 2d 125 (D.D.C. 1999), *aff'd sub nom.*, *Service Employees v. Philip Morris*,
249 F.3d 1068 (D.C. Cir. 2001) 8 n.4

Papasan v. Allain,
478 U.S. 265 (1986) 12

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Wright & Miller,
Federal Practice & Procedure 11, 12, 15

STATEMENT OF THE CASE

East Timor occupies the eastern portion of the island of Timor, situated northwest of Australia. Historically a Portuguese colony, East Timor was subsequently for years after 1975 occupied and controlled by its neighbor, Indonesia. On May 20, 2002, East Timor became independent.

Petitioners paint a lurid picture. In their Second Amended Complaint, they alleged that in 2002, upon the very day of East Timor's independence, ConocoPhillips supposedly handed $2 million in cash to Mari Alkatiri, the incoming Prime Minister of the newly independent nation, in order to avoid abrogation of oil and gas concessions in a disputed area of the seabed between Australia and East Timor known as the "Timor Gap." Those concessions had been jointly awarded to ConocoPhillips by Australia and Indonesia back in 1991; ConocoPhillips had subsequently discovered major oil and gas deposits in the concessions; and ConocoPhillips had been actively developing those deposits ever since.

The theory of the Second Amended Complaint was that the new East Timor Constitution supposedly vitiated all previously granted concessions and that, but for the bribery scheme, East Timor would have re-opened the concessions for new bidding and petitioners would have both bid — and won. Rather, that same day of independence, East Timor entered into a treaty with Australia — which, while not resolving the disputed ownership of the Timor Gap — confirmed those previously granted concessions.

As shown by respondents below, assuming the truth of petitioners' bribery allegations,[1] Oceanic's tortuous and highly speculative chain of causation nevertheless failed to meet the requirement of proximate cause as set forth by this Court in *Associated General Contractors v. California State Council*, 459 U.S. 519 (1983), *Holmes v. SIPC*, 503 U.S. 258 (1992), and *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006) — that theory of causation necessarily being that, but for the alleged bribery:

- the government of East Timor would have chosen to abrogate the existing concessions;
- the government of Australia would have gone along with any such abrogation;
- there would have been a new round of bidding for the concessions;
- Oceanic would have chosen to bid in such a hypothetical reopened bidding;
- Oceanic would have had the wherewithal to bid and would have been deemed a qualified bidder by East Timor and Australia;
- Oceanic would have won the hypothetical bidding; and
- Oceanic would have developed the concessions at a profit.

---

[1] Respondents in their Answer to the Second Amended Complaint have categorically denied those allegations of bribery and in the District Court demonstrated from matters of public record that the claim was highly implausible. Nevertheless, for purposes of the motion for judgment on the pleadings, the allegations have been presumed to be true. Pet. App. 18a, 23a, 32a.

The District Court — without reference to either *Twombly* or *Iqbal*, the latter case having yet to be decided — granted judgment on the pleadings, examining each of the essential links in that causal chain and finding petitioners' allegations to fall far short of the requisites set forth by this Court in its proximate-cause holdings. Pet. App. 25a-31a.

The Fifth Circuit affirmed the District Court's judgment. Citing the District Court's analysis of the attenuated causal chain that petitioners needed to satisfy, the Fifth Circuit held that "at least some of these circumstances are not plausibly pleaded in Oceanic's Complaint," and in particular, "Oceanic's claims fail to rise above the speculative level, because they fail to address the interests and influence of Australia." *Id.* at 12a. Even assuming, "absent bribery, that East Timor was willing to consider replacing ConocoPhillips with Oceanic," the Court could not find any "reason to believe Australia would have allowed this to happen":

> To the contrary, the Complaint describes Oceanic and Australia as adversaries at every historical stage. It alleges that Australia defied international opinion and subverted Oceanic's Portuguese concession by collaborating with Indonesia after an illegitimate invasion. It alleges that Oceanic supported an unsuccessful ICJ suit to declare that Portugal, rather than Indonesia and Australia, had rights to the Timor Gap. And it alleges, more recently, that Oceanic tried to convince East Timor to turn its back on Australia and build a pipeline to East Timor and a liquified natural gas facility on East Timorese soil, rather than accepting proceeds from a pipeline leading to a new facility in Australia. The Complaint

> provides no plausible grounds to believe Australia would have desired — or tolerated — disruption of its long-standing, extremely lucrative collaboration with ConocoPhillips in response to East Timor, which Oceanic describes as a "new and impoverished island nation," replacing Indonesia as its counterpart across the Gap.
>
> — Pet. App. 13a-14a (footnote omitted).[2]

The Fifth Circuit accordingly concluded that "Oceanic fails to properly plead proximate causation" in that the "causal link is 'overly attenuated,'" and the "alleged violation did not 'le[a]d directly to the plaintiff's injuries.'" Pet. App. 15a.

The Fifth Circuit thereafter denied petitioners' applications for panel rehearing and rehearing *en banc*.

REASONS FOR DENYING THE PETITION

1. There is no conflict of authority. Petitioners offer none of the traditional grounds for certiorari. They invoke no circuit split, no split between a court of appeals and a state court, and no split among state courts. And there is plainly no conflict with any decision of this Court: to the contrary, no less than three decisions of this Court — *Associated General Contractors*, *Holmes*, and *Anza* — as well as firmly established common law, mandated dismissal for lack of proximate cause in that there is a total absence of the required direct, non-speculative

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[2] It may be noted that in its brief in the District Court on the Rule 12(c) motion, Oceanic itself expressly acknowledged that there was an "alignment of interests" between Australia and ConocoPhillips with respect to the concessions and that "Australia favored the status quo." R6639.

relationship between the claimed wrong and the purported injury. And since the courts below issued their rulings, this Court's decision this past January in *Hemi Group v. City of New York*, 130 S. Ct. 983 (2010), directing dismissal on the face of a complaint — and strongly reiterating this Court's *Holmes* requirement of a non-"remote," "direct relation" between the alleged wrongful conduct and the injury claimed, and barring recovery by those only "indirectly harmed by the alleged conduct," *id.* at 989, 991 — has only served to confirm the entire correctness of the Fifth Circuit's decision.

Petitioners make no argument that the Fifth Circuit's decision is not in complete accord with these proximate-cause precedents of this Court: indeed, they chose not to cite any of these controlling decisions. What petitioners complain about instead are supposed "deep and important structural flaws in the pleading doctrines announced in the *Twombly* and *Iqbal* decisions." Pet. 15. Petitioners say those flaws allowed the Fifth Circuit judges to "roam outside the pleadings" to consider their "experience" and "common sense," and they say the court's ruling imposes on plaintiffs a requirement that they "anticipatorily plead defensive matter even before any defenses have been asserted." *Id.* at 13-15.

Having thus characterized — or more to the point, mischaracterized — the Fifth Circuit's decision, petitioners ask this Court to grant certiorari in order to "save *Twombly* and *Iqbal* from themselves, if they may be saved." *Id.* at 14. And if they cannot be saved, then petitioners ask the Court to "reconsider its commitment to *Twombly/Iqbal* altogether." *Ibid.*

This entire argument is baseless. Dismissal here was required under this Court's proximate-cause pre-

cedents without regard to the decisions in *Twombly* and *Iqbal* and hardly presents some opportunity for this Court to "reconsider" those rulings. While the Fifth Circuit cited this Court's decisions in both *Twombly* and *Iqbal* for the governing standards on a motion addressed to the pleadings, Pet. App. 10a, 12a, 13a, 14a — as it well should — the result in this case would necessarily have been the same under this Court's proximate-cause rulings with or without those decisions. *Cf. Hemi Group*, 130 S. Ct. at 983-94 (directing dismissal on face of complaint; no mention of *Twombly* or *Iqbal*).

2. Petitioners' claims fail for lack of proximate cause. The decisions below are entirely correct. The ground for dismissal of this case is straightforward: petitioners do not satisfy the pleading requirements of proximate cause. There is a total absence of any showing of the required direct, non-remote, non-speculative relationship between the claimed wrong and the purported injury. Petitioners' causes of action are accordingly barred by four decisions of this Court, *Associated General Contractors*, *Holmes*, *Anza*, and *Hemi Group*.

In 1983, in *Associated General Contractors*, this Court held that Congress intended the common-law requisites of proximate causation and directness of injury to apply to antitrust damage litigation, and concluded that such suits "would be subject to constraints comparable to well-accepted common-law rules applied in comparable litigation," including the essential elements of "proximate cause, directness of injury, [and] certainty of damages." *AGC*, 459 U.S. at 529, 532-35 (footnotes omitted). In 1992, then, in *Holmes*, this Court held that the RICO statute similarly adopted the common-law "demand" for a "direct

relation between the injury asserted and the injurious conduct" alleged, characterizing this "requirement" as "one of [the] central elements" of proximate causation. 503 U.S. at 268-69. Then in 2006, in *Anza*, this Court, in upholding a dismissal on the face of the complaint, further delineated the requirement of direct injury, emphasizing the need for certainty of damages, the impermissibility of an indirect and speculative link between the alleged misconduct and the pleaded injury, and the requirement that the plaintiff be the direct victim of the claimed wrongdoing. And finally, this January, in *Hemi Group*, this Court, reiterating the "direct victim" requirement, likewise — without reference to either *Twombly* or *Iqbal* — directed dismissal on the face of the complaint and yet again reaffirmed that a link between misconduct and injury that is "'too remote,' 'purely contingent,' or 'indirec[t]' is insufficient" to satisfy proximate cause. 130 S. Ct. at 989-90.[3]

As noted above, to find any connection between the alleged bribery scheme and any injury to Oceanic, the causal chain would require that, absent the alleged bribes:

- the government of East Timor would have chosen to abrogate the existing concessions;
- the government of Australia would have gone along with any such abrogation;
- there would have been a new round of bidding for the concessions;

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[3] It may be noted that, *if* there had been a bribery scheme here that deprived East Timor of gaining higher gas and oil revenues from the Timor Gap, the "direct victim" of such wrongful conduct under *Anza* and *Hemi Group* would nevertheless be the nation of East Timor and its citizenry — not petitioners.

- Oceanic would have chosen to bid in such a hypothetical reopened bidding;
- Oceanic would have had the wherewithal to bid and would have been deemed a qualified bidder by East Timor and Australia;
- Oceanic would have won the hypothetical bidding; and
- Oceanic would have developed the concessions at a profit.

This chain of causation — recognized as necessary by both courts below — is indirect and speculative in the extreme. Under *AGC*, *Holmes*, *Anza*, *Hemi Group*, and the common law principles that form the bedrock of those decisions, the causal theory fails on the pleadings as a matter of law.[4]

Insisting "there can be no doubt" they have "adequately stated a claim," petitioners argue the Fifth

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[4] Compounding the speculative nature of any connection between the alleged bribery and petitioners' claimed injury is the fact that a court would need to "deconstruct" the decision-making of two separate sovereigns, East Timor and Australia, in order to divine how those nations would have behaved in the absence of the alleged East Timor bribery scheme. The decisional law indicates that any such attempt to deconstruct governmental decision-making is in and of itself too speculative to be engaged in by courts. *See, e.g.*, *City of Columbia v. Omni Outdoor Advertising*, 499 U.S. 365, 377 (1991) ("[W]e have consistently sought to avoid" the "deconstruction of the governmental process and probing of the official 'intent.'"); *In re Tobacco (Guatemala)*, 83 F. Supp. 2d 125, 130 (D.D.C. 1999) (dismissing RICO and related claims: "Few inquiries are more speculative than this. In other contexts, courts traditionally have been reluctant to deconstruct the reasons for governmental decision-making because of the great number of subjective influences at play."), *aff'd sub nom.*, *Service Employees v. Philip Morris*, 249 F.3d 1068 (D.C. Cir. 2001).

Circuit viewed their pleading "through an improper filter" that required them to "overcome defenses that had not been asserted at the time the complaint was filed." Pet. 33, 32. And as if this were some breach-of-contract case, petitioners argue that Australia's required approval of an abrogation of ConocoPhillips' concessions was merely a "condition subsequent" to a (non-existent) "contract between Oceanic and East Timor" — and thus an issue on which the defense has the burden of proof. *Id.* at 35-36. This is truly frivolous: this is not a breach-of-contract case between Oceanic and East Timor. It is a RICO, antirust, and common-law tort action against ConocoPhillips claiming that the asserted bribery scheme deprived Oceanic of the opportunity to gain rights in the Timor Gap by bidding upon and winning some hypothetical bidding contest that would follow abrogation of existing concessions. Under *AGC*, *Holmes*, *Anza*, and *Hemi Group*, it is an essential element of petitioners' *affirmative* case to adequately plead "'some direct relation between the injury asserted and the injurious conduct alleged.'" *Anza*, 547 U.S. at 457 (quoting *Holmes*, 503 U.S. at 268). Petitioners have not done so. Pet. App. 12a-15a, 27a-32a.

Petitioners have no answer to *AGC*, *Holmes*, *Anza*, and *Hemi Group*: accordingly, they choose simply to ignore these controlling decisions of this Court.

3. *Twombly* and *Iqbal* do not affect the outcome here. Notwithstanding petitioners' attempt to re-cast this as a case about *Twombly* and *Iqbal*, those cases do not determine the outcome here. While the Fifth Circuit indeed cited to this Court's holdings in these cases in articulating governing pleading standards and noted that certain of petitioners' allegations were not "plausible," Pet. App. 12a, 13a, 14a,

nothing in the decision turned upon *Twombly/Iqbal*. The outcome would be the same if those cases had never been decided.

Thus, to take just one essential link of petitioners' causal chain — that Australia would have had to acquiesce in any attempt by East Timor to abrogate ConocoPhillips' Timor Gap concessions — petitioners' Complaint is entirely barren of *any* allegation, "plausible" or otherwise, that Australia would have done anything of the sort. To the contrary, as the Fifth Circuit explained in detail, the allegations of the Complaint itself squarely *refuted* any such concept that Australia — which claimed the disputed Timor Gap seabed for itself — would have gone along with any attempt by East Timor to unilaterally abrogate the concessions and put the mineral rights up for re-bidding. *See* pp. 3-4, *supra*. And, as noted above, in their own briefing below, petitioners themselves contradicted any such concept and conceded that there was an "alignment of interests" between Australia and ConocoPhillips and that "Australia favored the status quo." R6639.

If *Twombly* and *Iqbal* have any "deep and important structural flaws," as petitioners contend, this case does not expose them. Petitioners warn that *Twombly* and *Iqbal*, by allowing judges to apply "experience" and "common sense" in evaluating whether a complaint states a plausible claim for relief, liberate judges to wander "outside the pleadings, outside the rules of evidence, and outside the court record." Pet. 15 (quoting *Iqbal*, 129 S. Ct. at 1950). Even if that were true in theory, this is certainly not an appropriate case to re-examine such issues because it is not what happened here.

The reason the complaint failed the Fifth Circuit's "test of common sense plausibility," Pet. App. 13a, was not because of anything "outside the pleadings." Pet. 15. Rather, it was because allegations *in the complaint itself* wholly failed to support, and indeed controverted, petitioners' theory that East Timor could unilaterally abrogate the ConocoPhillips concessions and award them to Oceanic. Pet. App. 13a-14a. In the Fifth Circuit's own words, it was "the Complaint" that "present[ed] no reason to believe Australia would have allowed" Oceanic to replace ConocoPhillips — and indeed, contradicted any such concept — not some extra-record "experience" or "common sense" of the court. *Id.* at 13a.

Even before *Twombly* and *Iqbal* came down, courts were not obliged to accept self-contradictory allegations. Wright & Miller, *Federal Practice & Procedure* § 1363 (2004 ed.). Moreover, as the district court analyzed in detail, *see* Pet. App. 25a-31a, Australia's acquiescence was but one link in an overall speculative, remote, and indirect chain between the alleged wrong and Oceanic's supposed injury.[5]

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[5] Among other things, as the district court noted (*see* Pet App. 29a-30a), the very concept that Oceanic — which was engaged in no oil exploration or development at the time of the hypothetical auction, which had total assets of $3.7 million, whose principal business was that of an employment agency in San Diego, and who otherwise had eight employees — would have been deemed a qualified bidder by East Timor and Australia on this multi-billion-dollar project and would have outbid any number of multinational oil giants, including ConocoPhillips itself, in any such hypothetical bidding contest, is a causal link as to which "Oceanic can only speculate."

4. Conclusory pleading of proximate cause was insufficient before *Twombly* and *Iqbal*. Although petitioners are unwilling to discuss *AGC*, *Holmes*, *Anza*, or *Hemi Group*, they do claim that "proximate cause actually *was* pleaded." Pet. 30 (emphasis in original). Petitioners include no citation to any particulars in their Second Amended Complaint but are presumably referring to certain paragraphs in which they say things like: "Plaintiffs, and each of them, have been injured in their business or property as a *direct and proximate result* of the defendant Conspirators' violations of 18 U.S.C. § 1962(c) . . . ." Pet. App. 153a (emphasis added). That type of naked legal conclusion, without more, is not enough under *Twombly* and *Iqbal* — nor did it suffice previous to those decisions. *E.g.*, *Papasan v. Allain*, 478 U.S. 265, 286 (1986); Wright & Miller, *Federal Practice & Procedure* § 1286 (2004 ed.) ("[A] pleader's conclusory allegations of law, unsupported factual assertions, and unwarranted inferences do not have to be accepted by the federal court as true, particularly on a Rule 12(b)(6) motion to dismiss or a Rule 12(c) for judgment on the pleadings.").[6]

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[6] And it is idle for petitioners to contend that the sufficiency of the Complaint in this action is to be determined by reference to the Official Forms promulgated pursuant to Rule 84 of the Federal Rules of Civil Procedure. None of these Forms pertains to a case of the nature here; those Forms cannot be read to overcome this Court's mandated pleading standards, and of course, those Forms (or their predecessors) were in place when this Court determined *Anza* and *Hemi Group* holding that the complaints were required to be dismissed for failure adequately to plead proximate cause as required by *AGC* and *Holmes*. Those illustrative Forms cannot be read as nullifying this Court's substantive-law rulings in *AGC*, *Holmes*, *Anza* and *Hemi Group*.

Likewise, petitioners' argument that their common-law claims in particular are pleaded adequately — that the common law is somehow more tolerant of indirect and speculative causal connections than the RICO and antitrust statutes (Pet. 29-30) — is fallacious. The very genesis of *AGC*, *Holmes*, *Anza*, and *Hemi Group* is that the proximate-cause requirements of the common law were intended by Congress to be read into the federal antitrust and RICO statutes — not that that the requirements of those statutes stand apart from the common law. *E.g.*, *Hemi Group*, 130 S. Ct. at 989 ("Proximate cause for RICO purposes, we made clear [in Holmes], should be evaluated in light of its common-law foundations."); *AGC*, 459 U.S. at 531 ("The repeated references to the common law in the debates that preceded the enactment of the Sherman Act make it clear that Congress intended the Act to be construed in the light of its common-law background.").

In any event, as the Fifth Circuit noted, Oceanic "present[ed] no argument on appeal that any of its [non-RICO] claims could survive dismissal on proximate causation grounds if the RICO claim d[id] not." Pet. App. 10a-11a. Accordingly, any such argument has long since been waived.

5. Petitioners' remaining arguments have no merit and do not warrant certiorari.

a. There was no difference of opinion between the District of Columbia and the Southern District of Texas. The closest petitioners come to claiming a split of authority is their contention that Judge Sullivan in the District of Columbia and Judge Hughes in the Southern District of Texas supposedly came to different conclusions on the issue of proximate cause. Pet. 7-8. Putting aside that a conflict

between district courts is hardly a basis for this Court's review, petitioners simply misrepresent the record. No issue of proximate cause was ever raised by defendants' motion to dismiss in the D.C. court or ever ruled upon by that court. Rather, the only standing issue raised by that motion — and ruled upon by that court — was Article III, "case-or-controversy" standing, which only requires "but-for," "injury-in-fact" causation rather than proximate cause. *See Plains Commerce Bank v. Long Family Land & Cattle*, 128 S. Ct. 2709, 2717 (2008). Judge Sullivan rejected that defense. Pet. App. 55a-57a.

It was only after denial of that motion, with the action having been transferred to the Southern District of Texas, that defendants, by motion for judgment on the pleadings, raised the ground of lack of proximate cause. And when petitioners asked to strike that motion claiming that Judge Sullivan had already ruled on causation, Judge Hughes correctly distinguished the previous but-for causation issue from the "new issue" of proximate causation that was now before his court. Pet. App. 22a.

b. *Petitioners' claims of "factual misapprehensions" by the Fifth Circuit are misplaced.* Petitioners complain that the Fifth Circuit based its ruling on "significant factual misapprehensions" that "first appeared in the panel's opinion." Pet. 21. They say the panel "wrongly assumes" that the Timor Gap was developed, *ibid.*: but their Complaint alleges that the Timor Gap fields were "currently producing." Pet. App. 137a. They say the "lucrative," "multi-billion dollar" operations that the panel said ConocoPhillips had in the Timor Gap did not exist, Pet. 22: but their Complaint alleges over "US$50 billion" in "known reserves" in the Timor Gap, and "not less than $10.5

billion" in damages from the loss of the opportunity to compete there. Pet. App. 109a, 161a.

c. *Factual denials in respondents' Answer did not bar judgment on the pleadings.* Finally, petitioners argue that this case was inappropriate for judgment on the pleadings because respondents in their answer contested most of petitioners' factual allegations. Pet. 18-20. This is a total *non sequitur*. A motion for judgment on the pleadings is governed by the same standards as a motion to dismiss and — *for purposes of the motion* — assumes all properly pleaded allegations to be true. *See* Wright & Miller, *Federal Practice & Procedure* §§ 1367-1368. Whether a party has previously in its answer denied such allegations is wholly irrelevant to the motion.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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160

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IN THE

Supreme Court of the United States

OCEANIC EXPLORATION COMPANY,
A DELAWARE CORPORATION; ET AL., PETITIONERS

v.

PHILLIPS PETROLEUM COMPANY ZOC,
A DELAWARE CORPORATION ET AL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTRODUCTION 1

PETITIONERS' POINTS IN REPLY 3

A. OCEANIC HAS PLEADED THE PROXIMATE CAUSE ELEMENTS OF ITS RICO, ANTITRUST AND COMMON LAW CLAIMS IN ACCORDANCE WITH FEDERAL LAW AND THIS COURT'S JURISPRUDENCE. 3

1. The Court Of Appeals' Opinion Conflicts With This Court's Holdings In *Bridge v. Phoenix Bond & Indem. Co.*. 4

2. The Court Of Appeals' Opinion Also Conflicts With This Court's Recent *Hemi* Decision. 7

3. The Court Of Appeals' Opinion Also Conflicts With The Law Of Pleading Applicable To the Pleading Of State Law Claims In The Federal Courts. 9

B. THE COURT OF APPEALS IMPROPERLY INTERPRETED AND APPLIED *TWOMBLY/IQBAL* TO JUSTIFY A JUDGMENT ON THE PLEADINGS RENDERED ON THE BASIS OF PROFOUNDLY INCORRECT "FACTS," FROM UNKNOWN SOURCES FAR OUTSIDE THE PLEADINGS, AND IN CONTRAVENTION OF ALL OF THE APPLICABLE FEDERAL RULES..... 11

CONCLUSION 14

TABLE OF AUTHORITIES

Page

CASES

ASHCROFT V. IQBAL, 129 S. CT. 1937 (2009) ..... *passim*
BELL ATLANTIC CORP. V. TWOMBLY, 550 U.S. 544 (2007) ..... *passim*
BRIDGE V. PHOENIX BOND & INDEM. CO., 128 S. CT. 2131 (2008) ..... *passim*
HEMI GROUP, LLC V. CITY OF NEW YORK, 130 S. CT. 983 (2010) 4, 7, 9

RULES

FED R. CIV. P. 8, 9, 12, 56, 84 10
SUP. CT. R. 10(a) AND 10 (c) 2

I. INTRODUCTION.

Oceanic's petition for certiorari described district court proceedings that dramatically affronted virtually every law, rule, or case relevant to an entry of judgment on the pleadings. In those proceedings, the district court trampled on two opinions and three years of work by another federal district judge, most if not all of the Federal Rules of Civil Procedure intended to govern the pleading of claims in federal court, and most if not all of the rules intended to preclude the summary adjudication of fact issues at the pleadings stage – all in order to issue a completely improper Rule 12(c) judgment on the hotly-contested pleadings in this case.

The Fifth Circuit nevertheless blessed that judgment on the authority of this Court's *Twombly* and *Iqbal* decisions,[1] and did so on the basis of its conclusion, reached *at the pleadings stage*, as to which of the possible Australian government foreign policy responses to Oceanic's potential replacement of ConocoPhillips in the Timor Gap it believed to be "plausible."[2] That conclusion was in turn based on demonstrably false factual conclusions[3] improperly

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[1] *Bell Atlantic Corp v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v Iqbal*, U.S. 129 S. Ct. 1937 (2009).

[2] *See* Pet. App. at 13a ("Assuming, absent bribery, that East Timor was willing to consider replacing ConocoPhillips with Oceanic, the Complaint presents no reason to believe that Australia would allow this to happen."). The Fifth Circuit did not endorse the remainder of the district court's dismissal opinion. *Id* at 16a n.12.

[3] In its Petition, Oceanic pointed to the complete falsity of all of the key findings and assumptions on which the Fifth Circuit's

drawn from unknown sources, of unknown quality, outside the pleadings, and outside the court record.

Oceanic asks this Court to grant the writ of certiorari, and reverse the Court of Appeals, because the courts below decided questions of federal law in a manner that conflicts with that law and with the relevant decisions of this Court; because it decided, incorrectly, questions of federal law that have not but should be decided by this Court; and because the Court of Appeals, by virtue of its decisions, allowed the District Court to depart radically from the accepted and usual course of proceedings in the courts of this land.[4]

These deficiencies were set forth in great detail in Oceanic's petition, but are largely ignored by ConocoPhillips. Instead of discussing the *Twombly/Iqbal* issues that underpin the Court of Appeals' ruling, ConocoPhillips argues, very incorrectly, that (1) the permissible scope of the *Twombly/Iqbal* plausibility analysis is not at issue; and (2) that this case turned on RICO law, not on an adjudication of the facts. As will be seen below, however, that incorrect analysis only gives rise to one more ground for granting the writ.

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ruling was predicated. *See* Pet. at 12 n. 23; *id* at 21-24. As ConocoPhillips cannot and does not defend the accuracy of those findings, it can only quibble that: (1) Oceanic used the present tense in a 2005 complaint (written when Bayu-Undan was *finally* producing natural gas liquids); and (2) the presence of reserves long antedating ConocoPhillips' presence in the Timor Gap somehow proved that ConocoPhillips was producing in the field when it was not. *See* Response at 14-15.

[4] *See* Supreme Court Rule 10(c) and 10(a), respectively.

II. PETITIONERS' POINTS IN REPLY.

Oceanic is a serious plaintiff bringing serious claims,[5] and the ways in which it was deprived of those claims in the courts below raise issues that merit this Court's full and close attention. The first section below concerns those issues that arise from the errant RICO analysis that ConocoPhillips offers in lieu of a response to Oceanic's *Twombly/Iqbal* arguments. In light of the Response, the second section offers one last observation on those *Twombly/Iqbal* issues.

A. OCEANIC HAS PLEADED THE PROXIMATE CAUSE ELEMENTS OF ITS RICO, ANTITRUST AND COMMON LAW CLAIMS IN ACCORDANCE WITH FEDERAL LAW AND THIS COURT'S JURISPRUDENCE.

Much of the Response complains that Oceanic pays inadequate attention to this Court's opinions

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[5] In its Response (at 11, n.5), ConocoPhillips describes Oceanic as a small San Diego company having no business developing an oil and gas field in the Timor Gap. In actuality, however, Oceanic is a project vehicle with decades of extensive international energy development experience. *See, e g*, Pet. App. at 110a (¶ 51). Additionally, Oceanic was and is only one of a huge, well-funded and family-controlled group of companies that operate, on a world-wide basis, in the nuclear and non-nuclear energy sectors, as well as in numerous other advanced technology and industrial sectors. Defendants know this, as did the courts below. *See* DE No. 153 at 46-48 (transcript of the April 5, 2007 status conference); DE Nos. 149-151 (partial Oceanic corporate organization chart filed under seal). This Court should also know it.

[7] Response at 4-9.

regarding the pleading of proximate cause in the RICO/antitrust context.[7] However, the Fifth Circuit did not base its decision on those opinions. It based its decision on the alleged implausibility of what was pleaded.

Nevertheless, to the extent that the Fifth Circuit's decision actually was based on its interpretation of this Court's jurisprudence regarding RICO/antitrust pleading, that is only one more reason why certiorari should be granted. Among other things, that decision clearly conflicts with this Court's *Bridge* and *Hemi* opinions,[8] and errs by extending those opinions to the pleading of proximate cause in non-RICO contexts.

1. The Court Of Appeals' Opinion Conflicts With This Court's Holdings In *Bridge v. Phoenix Bond & Indem. Co.*

In evaluating Oceanic's pleading of proximate cause, the Fifth Circuit relied on circuit level authority predating and contradicted by the approach to such pleading this Court unanimously endorsed in *Bridge*. That omission only promoted the error that resulted.

In *Bridge*, this Court explained its jurisprudence regarding the pleading of RICO proximate cause as follows:

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[8] *Bridge v. Phoenix Bond & Indem Co*, 128 S. Ct. 2131 (2008); *Hemi Group, LLC v. City of New York*, 130 S. Ct. 983 (2010).

> Proximate cause . . . is a flexible concept that does not lend itself to 'a black-letter rule that will dictate the result in every case.' . . . Instead, we "use[d] 'proximate cause' to label generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts," . . . with a particular emphasis on the "demand for some direct relation between the injury asserted and the injurious conduct alleged," . . . ('When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries').[9]

As the *Bridge* Court further noted, this "central question" as to the relationship between a defendant's wrongful conduct and the plaintiff's injury must be carefully considered in each case, as proximate cause "is generally not amenable to bright-line rules."[10]

In *Bridge*, the Court made that considered inquiry, finding that the plaintiffs had adequately pleaded "proximate cause" by alleging that the wrongful conduct by one group of bidders for government contracts, intended in the first instance to induce government action for its own benefit, had directly and foreseeably injured its competitors for those contracts.

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9 128 S. Ct at 2142 (internal citations omitted).

10 *Id.* at 2145.

The *Bridge* lawsuit arose when rival bidders for county-owned tax liens discovered that the defendants had engaged in the wholesale submission of fraudulent bidder qualification affidavits to the county in order to gain an unfair share of the tax liens. In that context, the proximate cause allegations were simple: The plaintiffs "had suffered the loss of property relating to the liens they would have been able to acquire, and the profits flowing therefrom, had [the fraudulent bidder group] not implemented their scheme and acquired liens in excess of their appropriate share through their violation of the County Rule."[11]

The Seventh Circuit sustained the complaint, holding that the plaintiff had sufficiently alleged proximate cause "because they (along with other losing bidders) were 'immediately injured' by the fraudulent bidders' scheme."[12] This Court affirmed unanimously because:

> **the [plaintiffs'] alleged injury – the loss of valuable liens – is the direct result of [the defendants'] fraud. It was a foreseeable and natural consequence of [defendants'] scheme to obtain more liens for themselves that other bidders would obtain fewer liens.**[13]

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11 *Id.* at 2136 n.3 (quoting from the underlying complaint that was sustained in this Court).

12 *Id* at 2137 (citing the Seventh Circuit's opinion at 477 F.3d at 930-932)

13 *Id.* at 2145 (emphasis added).

The analogy to the Oceanic case is exact. Oceanic's alleged injury – the loss of the opportunity to obtain tremendously valuable oil and gas contracts – was the direct result of ConocoPhillips' bribery. It was also the foreseeable, natural and intended consequence of ConocoPhillips' scheme to obtain those concessions for itself that Oceanic – the only other competitor for those concessions[14]– could not obtain them.

Had the Court of Appeals considered the implications of *Bridge* for this case, it would have reached the same conclusion this Court reached in *Bridge* – and easily sustained Oceanic's Complaint. However, the Court of Appeals neither mentioned nor analyzed *Bridge*.[15]

2. The Court Of Appeals' Opinion Also Conflicts With This Court's Recent *Hemi* Decision.

In *Hemi*,[16] a plurality of this court dismissed the plaintiffs' civil RICO claims because those claims, on

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[14] The record confirms that only ConocoPhillips and Oceanic sought the subject oil and gas rights during the relevant period. The fact of this two-bidder universe is not contested, as Mr. Wachtell admitted in the sole hearing in this case. *See* DE 153 at 62-63 ("Of course, there were only two companies involved"). In fact, the record demonstrates that interest in the Timor Gap was *declining* during the relevant period, as company after company was *abandoning* their Timor Gap concessions. *See* DE No. 148-1.

[15] Very tellingly, the Response also fails to mention or analyze *Bridge*.

[16] 130 S. Ct. at 983

their face,[17] allegedly failed to plead proximate cause.[18] While there were significant divisions between the four Justices in the plurality and the remaining four Justices as to how the *Bridge* standards should be defined and applied in that case, Oceanic's pleadings clearly meet both the plurality's views (which stressed the directness of the injury) and the dissent's views (which stressed the forseeability of the *Hemi* plaintiffs' injuries).

Members of the *Hemi* plurality would surely appreciate that the causation issue here is as "straightforward" as that involved in *Bridge* and, as in *Bridge*, that this case involves a "zero-sum" game. If ConocoPhillips wrongfully obtained the subject production-sharing contracts, and thereby precluded

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[17] As ConocoPhillips recognizes, *see* Response at 7, *Hemi*'s analysis involved only the facial allegations of the complaint. *Unlike in this case*, there was no effort to pass judgment on the plausibility or implausibility of the complaint's factual allegations.

[18] The four justice plurality's view of proximate cause was not endorsed by Justice Ginsberg, who concurred in the judgment, but did so "without subscribing to the broader range of the Court's proximate cause analysis." *See* 130 S Ct. at 995. As the plurality view was even more squarely rejected by the three dissenters, and Judge Sotomayor had recused herself from the case, this Court had split (4 – 4) over the propriety of the plurality's analysis of the requirements for pleading proximate cause in the RICO/antitrust context. Though it seems clear that Oceanic's pleading of proximate cause in this case would satisfy either camp, certiorari could certainly be granted in this case to resolve that split, and thereby reach agreement on a clear standard endorsed by a full Court.

Oceanic from obtaining them, Oceanic was directly and predictably injured by that wrongful conduct.[19]

The *Hemi* dissenters, on the other hand, would clearly appreciate the fact that Oceanic's injury was intended, was foreseeable, and was precisely the type of injury that the RICO, antitrust, anti-bribery, and unfair competition laws were intended to prevent.[20]

3. The Court Of Appeals' Opinion Also Conflicts With The Law Of Pleading Applicable To the Pleading Of State Law Claims In The Federal Courts.

In its petition, Oceanic pointed to the impropriety of the Court of Appeals' support for the entry of a judgment on the pleadings regarding Oceanic's state common law claims.[21] As a result of that decision, Oceanic lost its access to both the federal *and the state courts*. That was so though Oceanic's state law claims had been properly pleaded under all of the applicable federal rules, and *none* of those rules required any special pleading of "proximate cause".

The Response never addresses these very problematic state law pleading issues. Instead, ConocoPhillips attempts to argues that this Court's RICO/antitrust jurisprudence requires the dismissal of common law claims not pleaded in the manner required

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19 *Hemi*, 130 S. Ct at 992.

20 *Id.* at 1000.

21 Petition at 28-31.

for RICO and anti-trust claims,[22] or that Oceanic has somehow waived its right to rely on the clearly applicable pleading rules.[23]

Neither of these approaches can disguise the fact that state law claims that did not even have to mention proximate cause were thrown out of court – *on the pleadings* – for failing to plead proximate cause. And that happened at the hands of courts believing themselves authorized, by *Twombly/Iqbal*, to decide the facts and, ultimately, the merits of this case, without regard for what was actually in the pleadings.

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[22] *See, e.g.*, Response at i (the ConocoPhillips "Question Presented," which urges that the dismissal of the common claims was "required" by the *AGC*, *Holmes*, *Anza*, and *Hemi* cases); *id* at 9 (repeating effort to lump the common law claims in with the RICO/antitrust claims, while ignoring the fact that they are subject to entirely different pleading regimes).

[23] *See* Fed. R. Civ. P. 8, 9, 12, 56, 84 and the Official Forms. Alternatively, ConocoPhillips tries to confuse the issue by claiming that Oceanic is arguing that these Federal Rules nullify this Court's RICO/antitrust pleading decisions, *see* Response at 12 n.6, when that is clearly not Oceanic's position. ConocoPhillips also argues that, because RICO/antitrust proximate cause pleading incorporates common law principles, common law claims must also be pled pursuant to the special rules for such federal statutory claims. *Id.* at 12-13.

B. THE COURT OF APPEALS IMPROPERLY INTERPRETED AND APPLIED *TWOMBLY/IQBAL* TO JUSTIFY A JUDGMENT ON THE PLEADINGS RENDERED ON THE BASIS OF PROFOUNDLY INCORRECT "FACTS," FROM UNKNOWN SOURCES FAR OUTSIDE THE PLEADINGS, AND IN CONTRAVENTION OF ALL OF THE APPLICABLE FEDERAL RULES.

The Petition's extensive discussion of the *Iqbal* and *Twombly* issues goes largely unaddressed by ConocoPhillips, and Oceanic will rely on its arguments therein. However, one point regarding ConocoPhillips' factual argument does need to be addressed: its incorrect premise that Oceanic's complaint stands or falls on the answer to a single question – whether Australia would have consented to an East Timorese termination of contracts with ConocoPhillips.[24] That very question, and the assumptions that underpin it, are counterfactual.

Oceanic's complaint demonstrates that in 1991, the "Joint Authority," a consortium of Indonesia and Australia created pursuant to the Timor Gap Treaty,[25] granted concessions to ConocoPhillips.[26] Notably, East Timor, as an independent nation, was not a party to the Timor Gap Treaty or to the 1991 grants. In fact, as

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24 *See* Response at 9-11.

25 *See* Pet. App. at 108a, ¶ 47, 122a, ¶ 84

26 *See id* at 117a-118a, ¶ 73.

East Timor's independence loomed, its leaders harshly criticized that treaty and ConocoPhillips, and made clear that, upon independence, East Timor would not succeed to that treaty.[27]

The issue never was whether *Australia* would have *consented* therefore to East Timor's *termination* of contracts bestowed during its Indonesian occupation, for the simple reason that Australia had no say whatsoever in deciding what, if any, treaties or contracts East Timor would terminate or confirm upon independence.

Instead, the real issue was always whether, but for the bribes, *East Timor*, upon independence, would have ratified and confirmed any Indonesian-era contracts. That issue, as framed by the facts in Oceanic's complaint, presents a starkly different proximate cause issue than the one addressed by ConocoPhillips and the courts below.

On that issue, the complaint alleges that the bribes affected the decision-making in East Timor as that country approached independence. While pre-bribe comments made by East Timor's decision-makers were hostile to the continuation of the treaty generally and to ConocoPhillips specifically,[28] their position after the bribes changed dramatically. While, as promised by the pre-independence leadership, East Timor's new constitution rescinded all prior contracts,[29] the bribes

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27 *Id.* at 122a, ¶¶ 84, 85.

28 *See id.*

29 *See id* at 123a-124a, ¶ 88.

caused East Timor to recognize and reinstate the contracts with ConocoPhillips, and to do so on terms even more favorable to ConocoPhillips.

Twombly and *Iqbal* had a profound effect on the disposition below because the Fifth Circuit based its dismissal on the implausibility of a scenario that could not arise in the context of the facts pleaded. Once one recognizes that East Timor, as an independent sovereign, was free to terminate or ratify any prior contract, the plausibility inquiry under *Twombly* and *Iqbal* changes dramatically, and the chain not causation invented by ConocoPhillips and adopted by the District Court crumbles.

For example, it is hardly speculative that East Timor could or would have abrogated prior concessions. The likelihood of such abrogation is consistent with the facts alleged relating to the pre-independence assessment of those agreements, and it is further confirmed by the terms of the Constitution cited in the complaint.

Similarly, whether Australia would have preferred to maintain the status quo is irrelevant because Australia had no power to cause autonomous East Timor to ratify Indonesian-era contracts without determining whether other contractors (like Oceanic) could do more for East Timor's sovereign interests.

This disturbingly off-track analysis is the logical outcome of any reading of *Twombly/Iqbal* that permits a court to wander so far from the pleadings - and so far from those rules of civil procedure and evidence that

provide integrity, discipline, fairness and quality control to the fact-finding process.

III. CONCLUSION.

This Court should grant the Oceanic petition for certiorari.

Respectfully submitted,

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